TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 430

SAMUEL M. ATKINSON, ET AL., PETITIONERS,

vs.

SINCLAIR REFINING COMPANY.

No. 434

SINCLAIR REFINING COMPANY, PETITIONER,

vs.

SAMUEL M. ATKINSON, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 22, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

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INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 25, 1962

[fol. A]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 13092, 13136, 13137

Nos. 13092, 13136

SINCLAIR REFINING COMPANY, Plaintiff-Appellant,

vs.

SAMUEL M. ATKINSON, ET AL., Defendants-Appellees.

No. 13137

SINCLAIR REFINING COMPANY, Plaintiff-Appellee,

vs.

SAMUEL M. ATKINSON, ET AL., Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Indiana, Hammond Division.

Honorable LUTHER M. SWYGERT, District Judge.

Joint Appendix—Filed November 28, 1960

[File endorsement omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

HAMMOND DIVISION

Hammond Civil 2566

Sinclair Refining Company, a corporation.

vs.

Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert V. Dermody, Frank Dicken, Thomas F. Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach, Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike Payer, John J. Podraza, John Reitz, A. F. Schilling, Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, and Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization.

DOCKET ENTRIES

3-12-59 Complaint filed. Summons issued and given to Marshal, Hammond. Cost Bond filed.

3-21-59 Summons returned served on deft. Kenneth Eddleman, Sec. of Local 7-210, 3-18-59 (3.20).

Summons returned served on deft. A. Dave Hering, International Representative, 3-18-59 (2.00).

[fol. 3] Summons returned served on deft. George Badis, 3-18-59 (2.00).

Summons returned served on deft. Charles Bainbridge, 3-18-59 (2.00).

Summons returned served on deft. Wilbur Beard, 3-19-59 (3.20).

Summons returned served on deft. Joseph Bundek, 3-18-59 (3.10).

Summons returned served on deft. Zoltan Cziperle, 3-19-59 (3.00).

Summons returned served on deft. Frank Dicken, 3-18-59 (3.10).

Summons returned served on deft. Arthur T. Juhasz, 3-19-50 (3.30).

Summons returned served on deft. John Mehrbrodt, 3-18-59 (2.00).

Summons returned served on deft. John Reitz, 3-18-59 (2.00).

Summons returned served on deft. A. F. Schilling, 3-18-59 (2.00).

3-25-50 Summons returned served on deft. Samuel Atkinson, 3-19-59 (2.20).

Summons returned served on deft. Paul Bennett, 3-20-59 (7.00).

Summons returned served on deft. Vergil Brading, 3-19-59 (3.20).

Summons returned served on deft. Robert Hughes, 3-19-59 (2.40).

Summons returned served on deft. Harold Leach, 3-19-59 (3.00).

Summons returned served on deft. Douglas Long, 3-22-59 (5.80).

Summons returned served on deft. Sherman Moore, 3-19-59 (2.40).

[fol. 4] Summons returned served on deft. Mike Payer, 3-19-59 (2.00).

Summons returned served on deft. John J. Podraza, 3-19-59 (2.40).

4-2-59 Summons returned served on Robert V. Dermody, 3-27-59 (2.50).

Summons returned served on Dean Bainbridge, 3-31-59 (5.00).

Summons returned served on Thomas F. Hicks, 3-31-59 (6.00).

Summons returned served on William Padjen, 3-31-59 (3.20).

4-8-59 Abraham W. Brussell, 318 W. Randolph, Chicago, Ill. and David Cohen, 2102 Broadway, East Chicago, Ind. enter appearance for defendants.

4-8-59 Parties file stipulation that defts. time to answer be extended. Order entered granting defts. time to answer to and including April 24, 1959 (SE). Swygert, J. (counsel notified).

4-9-59 Summons returned served on Charles Pacurar, 4-6-59 (6.00).

4-23-59 Parties file stipulation for ext. of time to plead.

Order entered ext. time for defts. to plead, to and incl. 5-8-59 (SE). Swygert, J. (Counsel notified).

5-8-59 Defendants file motion to stay action with exhibit A (affidavit) attached. Defendants file alternative motions to dismiss the action, strike the complaint or make the complaint more definite and certain.

Cert. of mailing filed.

5-11-59 Parties file stipulation (letter form) extending time to file brief in support of motions, to Wed., May 13, 1959.

[fol. 5] 5-13-59 Brief in support of defendants' Motions filed by defts.

5-18-59 Wm. E. Rentfro, P.O. Box 2812, Denver, Colorado, enters appearance as co-counsel for all defts.

5-27-59 Stipulation for extension of time in which to file a brief extended to June 15, 1959, filed. Order entered thereon (SE). Swygert, J.

6-12-59 Stipulation filed extending time for pltf. to file brief from June 15, 1959 to and including June 22, 1959.

6-15-59 Order entered granting ext. of time in which pltf. may file brief in support of complaint and in opposition to defts. motions to stay action and dismiss complaint to and including 6-22-59 (SE). Swygert, J. (copies to counsel).

6-19-59 Parties file stipulation that time within which pltf. may file brief in support of the complaint and in opposition to the motions to stay and motion to dismiss the action be extended from June 22, 1959 to and incl. June 29, 1959.

6-22-59 Order: The time in which plaintiff may file a brief in support of the complaint and in opposition to defts. motions to stay the action, and dism. the compl. is ext. to and incl. June 29, 1959 (SE). Swygert, J. (counsel notified).

6-29-59 Brief of plaintiff filed in opposition to defendants' motions to dismiss action, strike complaint or make the complaint more definite and certain.

7-9-59 Parties file stip. re filing briefs.

7-9-59 Order: Pursuant to stipulation of parties time within which defendants shall have to file a reply brief on their pending motions is extended to Aug. 15, 1959 (SE). Swygert, J. (copies to counsel).

[fol. 6] 8-17-59 Parties file stipulation for ext. of time for filing reply brief. Order: Pursuant to stipulation of parties, time within which defendants shall file reply brief on their pending actions is hereby extended to and incl. 8-22-59 (SE). Swygert, J. (copies to counsel).

8-22-59 Reply brief of defendants filed.

11-30-59 Pltf. files Motion for Discovery and Production of Documents Under Rule 34.

12-15-59 Parties appear by counsel at hearing on the pending motions, excepting plaintiff's motion under Rule 34. Argument heard and the motions are taken under advisement. Parties are granted 10 days from this date within which to file any supplemental memos.

12-22-59 Memo in support of Count III of complaint filed.

1-14-60 Supplemental brief of defendants filed.

3-12-60 Defendants' alternative motions of May 8, 1959, to dismiss the action, strike the complaint, or make more definite, and the motion of May 8, 1959, to stay the action, are each of them hereby denied (SE). Swygert, J. (copies sent).

3-18-60 Parties file stiplation that order be entered allowing the filing of motions to amend and to vacate and that hearing on said motions be continued until the return of Judge Luther M. Swygert; that all proceedings herein be maintained in status quo until the entry of a final order by Judge Swygert. So Ordered (SE). Robert A. Grant, Judge.

Defendants file motion to amend the order entered 3-12-60 with notice and affidavit attached thereto.

Defendants file motion to vacate order of 3-12-60, with notice and affidavit in support attached thereto.

5-3-60 Parties present by counsel at hearing on defendants' motion to vacate order or in the alternative, to [fol. 7] amend the court's order of 3-12-60. Hearing also had on plaintiff's motion to require defendant to produce under Rule 34. Defendants file a memo brief. Argument heard and the plaintiff requests and is granted 2 weeks within which to file an answer brief. Thereafter the defendants are granted 7 days within which to file any reply brief. Motions taken under advisement pending the filing of briefs.

5-24-60 Plaintiff files memo with affidavit and suggested form of order attached.

6-7-60 Defendants' reply memorandum in support of its pending motions filed.

6-23-60 Order entered granting motion to produce under Rule 34. (SE). Swygert, J. (copies to counsel).

6-23-60 Order: Upon rehearing, it is hereby ordered, decreed and adjudged that the order of March 12, 1960, be and hereby is vacated. It is further ordered, decreed, and adjudged that the motion to dismiss count I be, and hereby is, denied. It is further ordered, decreed and adjudged that the motions to dismiss counts II and III be, and hereby are granted. It is further ordered, decreed, and adjudged that the motion to stay be and hereby is denied. (SE). Swygert, J. (copies to counsel). Memorandum of decision entered thereon (SE). Swygert, J. (copies to counsel).

7-5-60 Parties present by counsel and file the following motions. 1. Plaintiff's motion to find that there is no just reason for delay; 2. Plaintiff orally moves the court to permit appeal pursuant to Sec. 1292(b) 28 U. S. C. (3). Defts. motion to amend order of June 23, 1960. Notice of motion to amend order of June 23, 1960. Hearing held on above motions and court grants plaintiff's motion to find no just reason for delay. (Order entered (SE). Swygert, J.) Plaintiff's [fol. 8] motion to permit appeal pursuant to Sec. 1292(b) 28 U. S. C. granted. (Order signed.) (SE) Swygert, J. Motion filed July 5, 1960 by defendants, to amend order of June 23, 1960, is granted.

7-21-60 Plaintiff files Motion to Vacate Orders of July 5, 1960 for purpose of consideration of Motions for leave to file an amended count II and for reconsideration of the court's ruling dismissing count III.

Plaintiff files motion for leave to file amended Count II and motion for reconsideration of the court's ruling dismissing count III. Parties present in court by counsel, for hearing on motions filed by plaintiff this date. (H.I.) Arguments heard. Order per form (SE). Swygert, J. (copies to counsel) Motion to va-

cate orders granted; motion to file amended complaint and for reconsideration of court's ruling dismissing count III denied.

7-28-60 Defendant files motion for the court to determine and rule that there is no just reason for delay and direct the entry of final judgment or order denying the aforesaid Motion to Stay pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Defendants file motion for leave pursuant to 28 U. S. C. 1292(b) to file an interlocutory appeal, and to direct the entry of a final order denying defendants aforesaid motion to dismiss or strike count I of the complaint, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Notice of motions filed.

7-28-60 Parties appear by counsel. Motion for entry of final judgment pursuant to Rule 54(b) relating to defendants' motion to stay pending arbitration heard. Motion granted. Court now determines and rules that there is no just reason for delay and therefore directs the entry of a final order denying the motion to stay. Judgment entered accordingly.

[fol. 9] Defendants' motion for an order pursuant to 28 U. S. C. Sec. 1292(b) for permission to file an interlocutory appeal from the court's denial of defendants' motion to dismiss and to strike Count I of the complaint, heard. Motion denied. It is stipulated by counsel that pending the appeal of the orders granting defendants' motions to dismiss Counts II and III, no assignment for trial will be made of Count I. Stipulation approved. Order to amend order of July 21, 1960 entered by agreement. Amended order entered (SE). Swygert, J. (copies of the foregoing entry to counsel).

8-6-60 Plaintiff files notice of appeal together with stipulation of both parties that plaintiff need not post any bond for the costs on appeal. (Copy mailed to Brussell.) (Letter certifying filing to all attorneys.)

8-19-60 Defendants file notice of appeal. (Clerk's cert. of filing forwarded to all counsel.)

Parties file stipulation waiving bond for costs of appeal.

8-26-60 Order entered before Judges Hastings, Knoch and Castle granting petition of plaintiffs (filed in CCA) to appeal pursuant to Title 28 U. S. C. Sec. 1292(b).

[fol. 12]

IN THE UNITED STATES DISTRICT COURT

COMPLAINT—Filed March 12, 1959

Now comes Sinclair Refining Company, a corporation, and for its causes of action against the defendants, Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert Dermody, Frank Dicken, Thomas F. Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach, Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike [fol. 13] Payer, John J. Podraza, John Reitz, A. F. Schilling, Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, and Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, respectfully shows:

Count I.

1. Plaintiff is a corporation and an employer in an industry affecting commerce within the meaning of Title 29, United States Code, Section 185, and the jurisdiction of the Court on this Count depends on said section.

2. Oil, Chemical and Atomic Workers International Union, AFL-CIO (hereinafter referred to as "International"), is a voluntary association and a labor organization representing employees in an industry affecting commerce within the meaning of Title 29, United States Code, Section 185, and at all times material hereto, together with various of its component local unions, has been, and now is, the recognized collective bargaining agent for all of that

class of employees at refineries operated by plaintiff at various places throughout the country (except at Hartford, Illinois), as more particularly described and limited in Article I of Exhibit A attached hereto, made a part hereof, and more particularly hereinafter referred to.

3. Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO (hereinafter referred to as "Local Union"), is a voluntary association and a labor organization representing employees in an industry affecting commerce within the meaning of Title 29, United States Code, Section 185. It is chartered by and is a component of the International. At all times material hereto the Local Union, together with the defendant International Union, has been, and now is, the recognized collective bar- [fol. 14] gaining agent for approximately 1700 production and maintenance employees in a bargaining unit confined to a refinery operated by plaintiff at East Chicago, Indiana, the internal constituency of which bargaining unit is more specifically described in Article I of Exhibit A hereinafter referred to.

4. The International, with the consent of the Local Union (and other local unions), and acting as its agent, and for and on behalf of it and its members, from time to time makes contracts with plaintiff for and on behalf of Local 7-210 and its members and for other local unions of the said International and their members employed by plaintiff at other locations. On or about August 8, 1957, pursuant to the national policy to avoid industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, plaintiff and said International Union, acting by and with the authority of the Local Union and its members, entered into a written contract regarding rates of pay, wages, hours of employment and other working conditions for all persons within the bargaining unit represented by the Local Union, said contract to have a term from June 15, 1957 to June 14, 1959, full, true and correct copy whereof is annexed hereto marked "Exhibit A" and made a part hereof. Plaintiff alleges that although the Local Union is not a signatory to the said contract, it is a

party thereto, that it and its members have ratified, approved and worked under it, have accepted both benefits and obligations thereof, and have accepted, adopted and ratified it as fully as though the said Local Union was a signer thereof, and that the Local Union administers the said contract for and on behalf of the affected employees.

5. Plaintiff shows that Article III of the said contract provides:

[fol. 15] "Article III.

Strikes-Lockouts-Slowdowns-Work Stoppages.

1. Employer agrees that during the term of this Agreement there shall be no lockouts.

2. Union agrees that during the term of this Agreement there shall be no slowdowns for any reason whatsoever.

3. Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages:

(1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or

(2) For any other cause, except upon written notice by Union to Employer provided:

(a) That Employer within thirty (30) days from the receipt of such notice will meet with the representatives of the Union and endeavor to reach an agreement on the matter in dispute.

(b) In the event an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified in (a) hereof, Union, upon the expiration of such forty-five (45) day period, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice."

6. Plaintiff shows that the definition of a grievance under Article XXVI of said contract is:

> "1. A grievance is defined to be any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations."

[fol. 16] The said Article further provides:

> "Grievance Procedure.
>
> It is the sincere desire of both parties that employee grievances be settled as fairly and as quickly as possible. Therefore, when a grievance arises, the following procedure must be followed: [Then follow provisions calling for meetings and conferences between the parties leading to binding arbitration as follows.]
>
> • • • • •
>
> 7. If such decision [by the Director of Industrial Relations thereon] is not satisfactory, then, upon request of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO and within sixty (60) days from the posting date of the final appeal answer, there shall be set up a local Arbitration Board, and such grievances and disputes submitted to it within ten (10) days after formation of such Board. * * *
>
> • • • • •
>
> 9. The decision of the Board aforesaid, as provided in Section 8 hereof, shall be final. * * *"

7. Plaintiff shows that February 13 and 14, 1959 were regular working days for its refinery at East Chicago, Indiana, but that on said days, in violation of Article III of the said contract, said International and said Local Union, by their officers, committeemen and other duly authorized and acting agents, caused a strike or work stoppage by approximately 999 of the approximate 1700 em-

ployees within the bargaining unit at said refinery over asserted pay claims on behalf of three members of the said bargaining unit aggregating $2.19, which asserted claims could, and, if valid, should have been the subject of a grievance under Article XXVI of the said contract.

8. Plaintiff shows that the work stoppage of February 13-14, 1959 greatly disrupted the normal operations of its refinery and that its damages by way of out-of-pocket ex- [fol. 17] penses directly caused by the aforesaid illegal stoppage were, to-wit, $12,500.

Wherefore, plaintiff brings this suit and prays judgment jointly and severally against said International and said Local Union for $12,500 and costs.

Count II.

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Maine. It maintains its principal office in the State of New York. For purposes of federal diversity jurisdiction, upon which this Count depends, it is a citizen of Maine and of New York and of no other states. Plaintiff is also an employer in an industry affecting commerce within the meaning of the National Labor Relations Act, as amended.

2. The defendants Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert V. Dermody, Frank Dicken, Thomas F. Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach, Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike Payer, John J. Podraza, John Reitz, and A. F. Schilling (hereinafter sometimes referred to as "individual defendants") are, and at all times material hereto were, employees of the plaintiff at a refinery which it operates at East Chicago, Indiana. Each said individual defendant is a citizen of Illinois or Indiana and none are citizens of Maine or New York. Each of the defendants in this paragraph named is, and at all times material hereto was, a committeeman of the Local Union and an agent of the International charged with represent-

ing and protecting their interests and those of their members in various sections or departments of plaintiff's refinery at East Chicago, Indiana.

[fol. 18] 3. The amount in controversy herein exceeds the sum or value of $10,000 exclusive of interest and costs.

4. Plaintiff adopts as and for the allegations of this paragraph 4 the allegations of paragraph 2 of Count I.

5. Plaintiff adopts as and for the allegations of this paragraph 5 the allegations of paragraph 3 of Count I.

6. Plaintiff adopts as and for the allegations of this paragraph 6 the allegations of paragraph 4 of Count I.

7. Plaintiff adopts as and for the allegations of this paragraph 7 the allegations of paragraph 5 of Count I.

8. Plaintiff adopts as and for the allegations of this paragraph 8 the allegations of paragraph 6 of Count I.

9. Plaintiff shows that February 13 and 14, 1959 were regular working days for its refinery at East Chicago, Indiana, but on said days the individual defendants and each of them, contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and conspiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract, and to interfere with performance thereof by the said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated in a strike or work stoppage by approximately 999 of the approximate 1700 employees within the bargaining unit represented by the Local Union at said East Chicago refinery over asserted pay claims on behalf of three members of the said bargaining unit aggregating $2.19, which asserted claims could, and, if valid, should have been the subject of a grievance under Article XXVI of the said contract.

10. Plaintiff shows that the work stoppage of February 13-14, 1959, greatly disrupted the normal operations of its refinery and that its damages by way of out-of-pocket

expenses directly caused by the aforesaid illegal stoppage, [fol. 19] induced, fomented and assisted by the individual defendants as hereinabove alleged, were, to-wit, $12,500.

Wherefore, plaintiff brings this suit and prays judgment jointly and severally against the individual defendants for $12,500 and costs.

Count III.

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Maine. It maintains is principal office in the State of New York. For purposes of federal diversity jurisdiction, upon which this Court depends with respect to the individual defendants, plaintiff is a citizen of Maine and of New York, and of no other states. Plaintiff is also an employer in an industry affecting commerce within the meaning of Title 29, United States Code, Section 185, and the jurisdiction of the Court on this Count depends on said section as to the labor organization defendants hereto as well as upon diversity.

2. The amount in controversy herein exceeds the sum or value of $10,000, exclusive of interest and costs.

3. Plaintiff adopts as and for the allegations of this paragraph 3 the allegations of paragraph 2 of Count I.

4. Plaintiff adopts as and for the allegations of this paragraph 4 the allegations of paragraph 3 of Count I.

5. Plaintiff adopts as and for the allegations of this paragraph 5 the allegations of paragraph 4 of Count I.

6. Plaintiff adopts as and for the allegations of this paragraph 6 the allegations of paragraph 2 of Count II.

7. Plaintiff adopts as and for the allegations of this paragraph 7 the allegations of paragraph 5 of Count I.

8. Plaintiff adopts as and for the allegations of this paragraph 8 the allegations of paragraph 6 of Count I.

9. Plaintiff alleges that notwithstanding said contract, [fol. 20] and its mandatory provision that when a grievance arises the procedures therein culminating in binding arbi-

tration "must be followed" if the grievance is not otherwise settled under the grievance procedure of said contract, and that there can be no strikes or work stoppages during the term of the agreement because thereof, the defendants, confederating and conspiring together to embarrass plaintiff, to cause it expense and damage and to secure the settlement of asserted grievances by means other than those provided by the contract, repeatedly fomented, abetted, caused, participated in, and brought about work stoppages at the said East Chicago refinery, including therein, but without limiting the generality of the foregoing, the following:

(a) On or about July 1, 1957, six employees assigned to the #810 Crude Still stopped work in support of an asserted grievance involving the removal of Shift Machinists from the #810 Still area;

(b) On or about September 17, 1957, all employees employed in the Mason Department refused to work on any shift during the entire day; the entire Mechanical Department refused to work from approximately noon until midnight; the employees of the Barrel House refused to work from the middle of the afternoon until midnight; a picket line was created which prevented operators from reporting to work on the 4:00 P.M. to midnight shift, all in support of an asserted grievance on behalf of five apprentice masons for whom insufficient work was available to permit their retention at craft levels.

(c) On or about March 28, 1958, approximately 73 employees in the Rigging Department refused to work for approximately one hour in support of an asserted grievance that riggers were entitled to do certain work along with machinists.

(d) On or about May 20, 1958, approximately 24 em-
[fol. 21] ployees in the Rigging Department refused to work for 1¾ hours in support of an asserted grievance that riggers were entitled to do certain work along with boilermakers.

(e) On or about September 11, 1958, approximately 24 employees in the Rigging Department refused to work

for approximately two hours in support of an asserted grievance that pipefitters could not dismantle and remove certain pipe coils without riggers being employed on the said work also.

(f) On or about October 6 and 7, 1958, approximately 43 employees in the Cranes and Trucks Department refused to work for approximately eight hours in support of an asserted grievance concerning employment by the Company of an independent contractor to operate a contractor owned crane.

(g) On or about November 19, 1958, approximately 71 employees refused to work for approximately 3¾ hours in the Boilermaking Department in support of an asserted grievance that burners and riggers would not dismantle a tank roof without employment of boilermakers at the said task.

(h) On or about November 21, 1958, in further pursuance of the asserted grievance referred to in subparagraph (g) preceding, the main entrance to the plant was picketed and barricaded, thereby preventing approximately 800 employees from reporting for work for an entire shift.

(i) On or about February 13 and 14, 1959, approximately 999 employees were induced to stop work over an asserted grievance on behalf of three riggers that they should not have been docked an aggregate of $2.19 in their pay for having reported late to work. Plaintiff shows that with respect to at least nine of the individual defendant committeemen involved in the stoppage of February 13 and 14, 1959, the Local Union, after the event had occurred and [fol. 22] while fully aware of the illegality thereof, further ratified and condoned the illegal conduct by paying at least nine of the said individual committeemen for all the time they lost from work through participation in the illegal activity.

10. Plaintiff alleges that in each of the instances referred to in subparagraphs (a) to (i) inclusive of paragraph 9 hereof, the asserted grievance was a grievance which could, and if valid should have been submitted for

disposition, and if necessary to final arbitration, under the grievance provisions of the contract.

11. Plaintiff alleges that in each of the instances referred to in subparagraphs (a) to (i) inclusive of paragraph 9 hereof, losses, damages and out-of-pocket expenses were caused to it in substantial amounts which are incapable of precise ascertainment because the damages flowing directly from and as a consequence of a work stoppage in a refinery affect so many departments and costly operations that it is impossible to assess them accurately; that said damages herein referred to greatly exceed $10,000 and the value of uninterrupted performance hereafter under the contract Exhibit A is worth greatly in excess of $10,000 exclusive of interest and costs.

12. Plaintiff alleges that the pattern of repeated violations of the contract as herein alleged shows either that the defendants do not regard the provisions of the contract requiring grievances to be submitted to the grievance procedure, including, if necessary, arbitration, to be valid and binding, or, in the alternative, repeatedly, consistently and deliberately violated them. Unless the Court shall declare the no-strike and grievance provisions of the contract valid and enforceable, and unless defendants are restrained and enjoined, they will continue their illegal course of conduct and subvert the provisions of the contract forbidding strikes over grievances and requiring that they [fol. 23] be handled through the grievance procedure by resorting to further stoppages. Plaintiff shows that it has no plain, simple and adequate remedy at law because at law it would be forced to resort to a multiplicity of actions in which full and complete damages would be impossible of assessment, nor would such inadequate remedies at law achieve the national policy of avoiding unnecessary interruption of production of goods for commerce and of commerce.

Wherefore, plaintiff prays:

1. That this Court declare the rights of the parties in the premises under Articles III and XXVI of the contract

between the parties dated August 8, 1957, and that the provisions of said Articles are legal, binding and enforceable; that any strike or stoppage of work in any way in support of any grievance, or alleged grievance, by any member of the bargaining unit at plaintiff's East Chicago, Indiana refinery covered by said contract, is illegal, and that all such asserted grievances, if rectification thereof is desired, must be prosecuted under the procedures prescribed by the said contract; that any economic action, including strikes, stoppages, slowdowns, or any other disruption of, or interference with, production, normal operations or normal employment at said refinery to secure disposition or settlement of such asserted grievances, is illegal, is violative of the contract and of public policy and may, and should be enjoined.

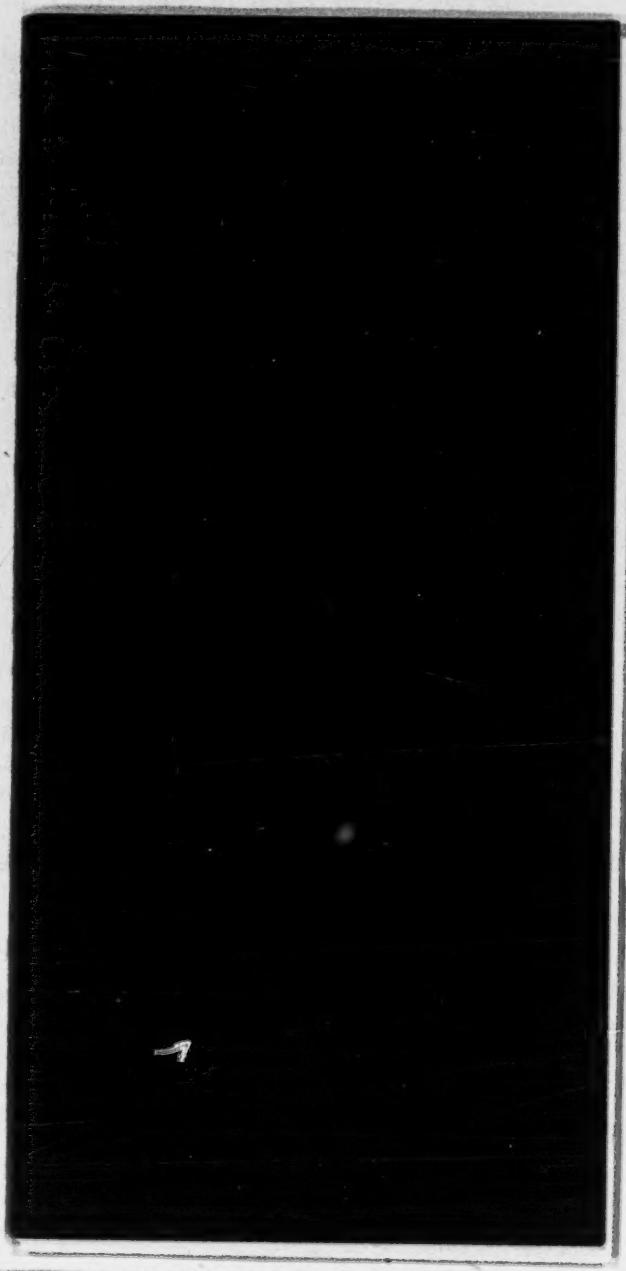
2. That the defendants, and each of them, their agents, servants, counselors, and all to whom notice hereof may come, be enjoined and restrained, preliminarily at first, and thereafter permanently, from aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bar-[fol. 24] gaining unit at plaintiff's East Chicago, Indiana refinery covered by the contract between the parties dated August 8, 1957, in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of the said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions.

3. That the plaintiff have such other relief as may be meet, including its costs most wrongfully sustained.

George B. Christensen, Timothy P. Galvin, Attorneys for Plaintiff.

Winston, Strawn, Smith & Patterson, 38 South Dearborn Street, Chicago, Illinois; Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana, of Counsel.

[fol. 25] EXHIBIT A



[fol. 25] EXHIBIT A

ARTICLES OF AGREEMENT

between

Sinclair Refining Company,
Sinclair Oil & Gas Company,
Sinclair Pipe Line Company, and
Sinclair Research Laboratories, Inc.

(each hereinafter referred to as "Employer")

and

Oil, Chemical and Atomic Workers International Union AFL-CIO, (hereinafter referred to as "Union") acting as the sole bargaining agency in respect to wages, hours and working conditions for the employees (as hereinafter defined) of the Employer engaged in the operations as set forth in Article I hereof.

Whereas the parties to this agreement intend to provide an increasing spirit of harmony between Employer and employees,

Now, Therefore, it is understood and agreed as follows:

ARTICLE I

Recognition

1. The Employer recognizes the Union as the sole Collective Bargaining Agency for the employees covered by this working agreement. The Employer and the Union agree that the words "employee" or "employees" as used in this working agreement shall mean the employee or employees engaged in Refining as conducted by Sinclair Refining Company, except at its Wood River Refinery located at Hartford, Illinois; Pipe Line operations as conducted by Sinclair Pipe Line Company; the development

and/or production of crude oil and/or natural gasoline and the purchase and marketing of crude oil by Sinclair Oil & Gas Company; and the aforementioned activities of other companies which may hereafter be acquired. This agreement shall apply to such employees who are covered by this agreement and are employed by Sinclair Research Laboratories, Inc. The Union is to bargain collectively for such employees regarding rates of pay, wages, hours of employment and other working conditions. The following employees, however, are excluded from this bargaining unit:

(a) Supervisory employees—Supervisory employees are defined as employees of the Employer who act in a supervisory capacity and have authority to hire, or promote, or discharge, or discipline, or otherwise effect a change in the status of employees subject to their supervision, or effectively recommend such action. It is understood and agreed that stillmen, treaters, gang leaders, pipe line telegraphers, pipe line teletype operators and pipe line dispatchers and other similar classifications are not to be considered supervisors.

(b) Executive, administrative and professional employees.

(c) Clerical employees.

(d) Technical employees.

ARTICLE II

Term of Agreement

1. This agreement shall become effective June 15, 1957, and continue to June 14, 1959 and thereafter unless terminated by either party on sixty (60) days' written notice to be given by the party electing to terminate. Within said period of sixty (60) days the parties hereto shall confer for the purpose of mutually considering upon what terms and conditions this agreement may be amended instead of terminated.

EXHIBIT A

ARTICLE III

Strikes-Lockouts-Slowdowns-Work Stoppages

1. Employer agrees that during the term of this Agreement there shall be no lockouts.

2. Union agrees that during the term of this Agreement there shall be no slowdowns for any reason whatsoever.

3. Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages:

(1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or

(2) For any other cause, except upon written notice by Union to Employer provided:

(a) That Employer within thirty (30) days from the receipt of such notice will meet with the representatives of the Union and endeavor to reach an agreement on the matter in dispute.

(b) In the event an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified in (a) hereof, Union, upon the expiration of such forty-five (45) day period, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice.

ARTICLE IV

Classification Changes-Retracking Privileges

1. If work of a higher paid classification is temporarily or permanently required of

any employee, he shall receive the wage of the position to which he has been assigned for as long a time as he occupies that posi ion.

2. If any employee is temporarily shifted to any classification paying a smaller wage than his regularly assigned classification, no reduction in wages shall be made unless such employee is shifted at his own request.

3. In cases where an employee's services are no longer required under his classification, he may retrack to any other department in which he holds seniority, or to the labor department, in the manner governed by Article V.

4. Any employee demoted from his regularly assigned classification (except when such demotion is made at the employee's request or is incident to an extension of the work week beyond the hours of work existing at the date of this agreement) shall receive the rate of pay of the classification from which he is demoted for a period of two (2) weeks from the date of the demotion. This section is not applicable to demotions for cause.

5. When practicable all regular jobs on operations shall be covered by a full crew at all times.

6. All work peculiar to any craft or classified employment (job) shall be done by employees regularly assigned to that craft or classification (job) except in cases of extreme emergency. No arbitrary changes in present classifications will be made with the purpose or result of reducing the pay of any classified job.

7. No foreman or other supervisory employee shall perform duties customarily as-

signed employees covered by this agreement, except:

(a) In emergencies.

(b) In connection with the instruction of an employee.

(c) In the interest of avoiding an accident.

ARTICLE V

Seniority

1. All employees for the first forty-five (45) day period of their employment are on probation and their services may be terminated during that time at the Employer's discretion, provided, however, this section shall not abrogate such employees' rights of promotion and demotion.

2. In filling vacancies in the higher classifications, the Employer accepts the principle of exercising due regard for length of service, taking into account ability and efficiency; and the practice will be followed of promoting those who, by length of service and ability, shall be deemed to have earned promotion; a reasonable breaking-in period, of not less than five working days, shall be provided by Employer.

3. Seniority shall be strictly adhered to in both plant and department so long as the employee has ability and executes the job in a safe and workmanlike manner. Any employee starting in the labor department and advancing in any of the various departments shall hold his labor department seniority, but in no case can he retrack to the labor department and rank above an employee who has longer plant service. In the event that an employee be hired or transferred to a department for any particular or temporary service he shall in no case hold any seniority right over employees having longer service. Employees' service seniority

shall immediately start upon employment but an employee's department seniority shall be retroactive only to date of transfer to said department. It is the spirit of this Article that an employee shall start his employment in the labor department and advance through the various departments and hold seniority in the labor department.

4. Whenever in the estimation of management it is deemed necessary to deviate from seniority in making a promotion, this deviation shall, prior to permanent placement of the employee in the position in question, be made the subject of immediate conference with Workmen's Committee for the purpose of arriving at a satisfactory settlement.

5. Should a grievance arise under the preceding paragraph, said grievance shall be presented to management in writing within fourteen (14) days after such deviation is made.

6. If any employee is laid off through reduction of forces or for any other reason beyond his control and re-employed within one (1) year, such lay-off shall not affect his seniority status.

7. (a) In each refinery the last employee hired shall be the first employee laid off, provided a qualified replacement is available, subject, nevertheless, to the provisions of subsection (b) and (c) hereof.

(b) In the event of a permanent shutdown of a refinery or a permanent major curtailment thereof, the employees affected who have been employed for a period of two (2) or more years, shall have the right to continue employment, as hereinafter defined, at other refineries, or to accept lay-off and receive payments of all benefits due under the provisions of this Agreement. An

employee so electing to continue his employment may exercise his service seniority to displace that employee with the least service seniority in the lower classification of the over-all refinery operations and he shall thereafter be entitled to promotional, demotional and other seniority rights in accordance with the seniority rules existing at his new place of employment. When any such permanent shutdown or permanent major curtailment is contemplated, the parties hereto shall meet not less than sixty (60) days prior to such actual shutdown or major curtailment, and mutually agree upon a detailed and complete method for placing the provisions of subsection (b) and (c) hereof into effect. This section shall not, however, be construed as changing in any way the existing rights of the Employer or employees regarding termination of employment or lay-offs except as provided herein.

If there is doubt as to whether a curtailment involving the layoff of employees should be classified as a permanent major curtailment, this question shall be referred to the President of the International Union and the Director of Industrial Relations for the Sinclair Companies, or their designees, who will meet for the purpose of deciding whether such curtailment should be classified as a permanent major curtailment within the meaning of this subsection (b).

(c) When a refinery employee with two (2) or more years of seniority is transferred to a different refinery, under the provisions of section (b) hereof, he shall be entitled to promotions and demotions on the basis of his plant seniority in the plant to which he is so transferred and according to the seniority rules in effect at that plant. However, he shall be entitled to exercise his full Company seniority as protection against a layoff.

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8. In Sinclair Research Laboratories, Inc. the last employee hired shall be the first employee laid off; provided a qualified replacement is available.

9. In each seniority district of Pipe Line operations, the last employee hired shall be the first employee to be laid off, provided a qualified replacement is available. An employee scheduled to be laid off in one seniority district of Pipe Line operations shall have the right of displacing the most junior employee in the Laborer and Pipeliner classifications throughout the entire pipe line system, provided the employee to be displaced has less service seniority than the employee scheduled to displace him or the right to accept lay-off and receive payment of all benefits due under the provisions of this working agreement.

10. In each seniority district in Producing operations, the last employee hired shall be the first employee to be laid off, provided a qualified replacement is available. An employee scheduled to be laid off in any seniority district of Producing operations shall have the right to displace the Roustabout that is most junior in all of the other Producing Divisions, if such junior Roustabout has less service than the employee scheduled to displace him, provided he has the ability to do so. Should an employee scheduled for lay-off not elect to exercise his right to continued employment, as provided above, he may instead accept lay-off and receive payment of all benefits due under the provisions of this working agreement.

11. In Pipe Line operations, Producing operations, in each refinery or Sinclair Research Laboratories, Inc., the last employee laid off shall be the first employee re-hired if qualified, when taking on more employees. Any employee laid off shall be given notice

of opportunity for re-employment at his last known address and the appropriate Workmen's Committee notified of such employment opportunity. Failure of an employee to report for work within ten (10) days after notice of opportunity for reemployment as set forth herein shall constitute resignation. In extraordinary cases where the employee is unable to return within said ten (10) day period by reason of emergencies such as but not limited to authentic hospitalization and family illness, the Employer will allow the employee sufficient time to report, subject to the time limitation set forth in Section 6 of this Article. This paragraph shall not be construed as requiring the Employer to re-employ any former employee who has been laid off more than one (1) year or who has not had a total of forty-five (45) days' employment. The preceding sentence shall not be construed to deprive any employee of his rights to promotion, demotion or lay-off on the basis of seniority. In any cases of allegation of discrimination arising under this clause, such cases will be made the subject of immediate investigation by the President of the Employer or someone designated by him. This article is subject to the application of Article XXVI.

12. Seniority lists shall be compiled and be kept available at all reasonable times and the workmen's committee shall also have access to daily time reports to verify disputed seniority lists and service records. A copy of such seniority lists shall be furnished the chairman of the Workmen's Committee semi-annually during the months of September and March of each year.

13. If it is desired by either party to this Agreement, local Workmen's Committees shall meet with local managements for the purpose of arriving at mutually satisfactory applications, working rules and under-

standing of the seniority rule, giving consideration to job, and/or department, and/or plant, and/or service seniority, and such committee may be accompanied by an officer, district director or international representative of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, if it so desires. In the event of failure to agree, such disputes may be submitted to arbitration under the terms of this Agreement.

ARTICLE VI

Hours of Work

1. Hours of work shall not exceed forty (40) in any one work week, or eight (8) in any one day, or sixteen (16) in any two consecutive days, except in the case of emergency. It is agreed, however, by the parties hereto that the above mentioned hours may, during the period of this agreement and subject to the following conditions, be modified to the extent that hours of work shall not exceed forty (40) in any one work week, nor more than seventy-two (72) in any two consecutive work weeks, nor more than eight (8) in any one work day, or sixteen (16) in any two consecutive work days, except in case of emergency.

2. In the event the aforementioned modification is desired, either party may give written notice to the other party that a general dispute exists within the meaning and intent of Article XXVII hereof. Within thirty (30) days of the receipt of such written notice, the parties shall meet for the purpose of discussing such proposed changes, in an effort to reach an agreement. If an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified above, the Union shall have the right to exercise its prerogative by serving the fifteen (15) days' notice

as provided in Article III, Section 3, subdivision 2 (b) of this Agreement.

3. In cases of any other changes affecting working hours desired either by employees or the Employer, such changes shall be explained, reasons therefor given and fully discussed, and any objections of employees fully considered before such changes become effective. In no event shall such changes become effective in less than seven (7) days after the change has been discussed in conference with the Workmen's Committee.

ARTICLE VII

Overtime

1. Hours worked in excess of eight (8) per day and in excess of forty (40) in any work week, shall be compensated for at the rate of time and one-half (1½) the regular rate of pay. (Subject, nevertheless, to the modification provisions provided in Article VI, Sections 1 and 2.)

2. All employees shall receive time and one-half (1½) their regular rate of pay for all work performed beyond their regular quitting time and for all work performed in advance of the regular starting time. It is understood that where an employee is required to begin work three (3) hours or more in advance of his regular starting time, it shall be considered a change in his working hours coming under the rules stated in Section 6 of this Article.

3. Whenever an employee is called for duty outside of his regular working hours he shall receive pay for actual time worked at one and one-half (1½) times his regular rate with a minimum of four (4) hours' pay at his regular rate. In the event no work shall be required of an employee called out, he shall be compensated for three (3) hours at his regular rate of pay.

4. Whenever an employee is required to report for work as scheduled and then shall not be required to work, or shall work less than three (3) hours, he shall receive pay for not less than four (4) hours' work. If three (3) hours or more are worked compensation shall be paid for at least a full day.

5. Employees shall be compensated at double their straight time rate of pay for—

(a) All work performed on the seventh consecutive day worked within the work week, and

(b) All hours of work performed on the seventh day which are in excess of 48 hours worked during the work week.

Except when an unworked paid holiday falls on an employee's regularly scheduled day off the counting of days and hours worked shall include unworked paid holidays and each day during which more than four (4) hours of work have been performed. If, however, an employee absents himself for a portion of a day without justifiable cause, then that day shall not be counted in the computation of seven (7) consecutive days of work.

6. When employees' work hours are changed, they shall receive time and one-half (1½) for the first day worked outside of their regular hours with the following exceptions:

(a) In course of regular shift changes.

(b) When employees are promoted to a higher rated classification to fill a permanent job vacancy.

(c) Where the change due to change in lunch period does not alter the quitting time more than one hour.

(d) Where employees' working hours are changed by reason of vacation relief work.

(e) Where the changes are due to employees being granted Union or personal leaves of absence. For the purpose of this sub-section jury service, personal illness or funeral allowances shall not be considered as personal leave of absence.

(f) Where the changes are due to demotions, the Company will pay either the demotion pay or the time and one-half (1½) premium pay, whichever is the greater.

7. If any employee is kept off his regular scheduled working hours for seven (7) or more calendar days, he shall receive time and one-half (1½) for the first day worked when returned to his former regular hours, or when put on a different schedule of hours except where the change is made under conditions listed in Section 6 of this Article.

8. When employees lose time and pay within a pay period as a result of shift changes or changes in hours, the Employer will compensate such employees for the net amount they lose.

9. Any employee required to work on his regular day off shall receive time and one-half (1½) for work performed on that day. The crews now regularly designated to work on Saturday may be maintained.

10. Any employee who is required to work overtime past a regular meal time shall, at the Employer's expense, be supplied with a meal. Additional meals shall be supplied at each five (5) hour interval thereafter as long as the employee works overtime. The employee shall be afforded an opportunity on Employer's time to eat the meal so supplied at the time he is deemed to have earned the same, or as soon thereafter as the condition of the work permits. Workers' meal times are to be determined

by local committees and are to be incorporated as a part of local supplementary rules.

11. (a) The payment of time and one-half (1½) covering the following shall be offset against overtime for hours worked in excess of forty (40) in the work week:

(1) Callout work.

(2) Work performed in advance of regular starting time or beyond regular quitting time.

(3) Hours worked in excess of eight (8) per day.

(4) Employer-called conferences as per Article XXV of this Agreement.

(b) The following shall not be offset against overtime payments for hours worked in excess of forty (40) in the work week:

(1) Change of hours.

(2) Work performed on paid holidays.

(3) Double time payable on seventh (7th) day.

(4) Work performed on regular day off.

(c) There shall be no pyramiding of rates for the same day worked and if two (2) or more rates are applicable for the same hours worked, the higher rate only shall be paid.

12. Employer will, insofar as the exigencies of the business permit, distribute overtime uniformly among all employees within each classification concerned. Records of overtime worked will be made available to employees and the Workmen's Committee upon request. Local representatives of the parties will confer to determine what records are suitable for the purposes of this section.

The overtime records of day and mechanical employees in the refineries will be posted at quarterly intervals.

EXHIBIT A

13. No employee shall be required to take time off from his regularly scheduled work week for the purpose of offsetting overtime.

ARTICLE VIII

Shift Operations

Definitions

1. All work performed by the employees covered under the terms of this Agreement shall be done by employees termed shift employees and/or day employees. The term "shift employees" as used herein shall be deemed to mean men who are employed for specific periods in the course of operations regularly carried on during two or more shifts per day; all other employees shall be designated as "day employees."

2. It is recognized that it is necessary to work certain day employees on Sundays and holidays in connection with continuous operations, and such day employees who are regularly scheduled for holiday and Sunday work will be classed as shift employees insofar as the application of overtime is concerned. It is agreed that the local committees and management shall prepare definite lists of such jobs for each plant or operation, which lists shall include regularly classified dock loading and cleanout crews. Such list when mutually agreed to by the parties shall be effective.

Shift Differentials

1. All hourly-rated employees regularly assigned to the second (evening) shift shall be paid the differential in effect which shall be included in the base rates of pay for purposes of computing overtime payments, vacation payments, sick benefit allowances, demotion pay, severance pay and travel time.

2. All hourly-rated employees regularly

assigned to the third (night) shift shall be paid the differential in effect which shall be included in the base rates of pay for purposes of computing overtime payments, vacation payments, sick benefit allowances, demotion pay, severance pay and travel time.

3. In the case of double-overs and double-backs (these are defined as employees who have completed their regularly scheduled working hours and who are held over or assigned to work another shift occurring within twenty-four (24) hours from the start of their regularly scheduled hours) these employees shall be paid the shift differential in effect for the shift so worked (which shall be included in the base rates of pay).

4. All hourly-rated employees who are not regularly assigned to shift work and who are required to work one (1) hour or less during or into said shift hours shall not be paid shift differentials even though they may work overtime into a shift or may be called out to work during such shift hours. However, all such employees who are required to work for more than one (1) hour during or into said shift hours shall be paid the applicable shift differential in addition to their base or overtime rates of pay.

ARTICLE IX

Vacations

1. Each employee after twelve (12) months of continuous service shall be entitled to two (2) weeks' vacation with full pay. Each employee after ten (10) years of continuous service shall be entitled to three (3) weeks' vacation with full pay. Each employee after twenty (20) years of continuous service shall be entitled to four (4) weeks' vacation with full pay. When an em-

ployee's granted vacation period includes one of the herein specified unworked paid holidays for which the employee would have been compensated had he not been on vacation, the employee is to be paid for an extra day at his vacation rate of pay.

2. Continuous service is to be computed from the employee's date of employment. Vacation allowances are not cumulative from year to year.

3. Any employee whose services are terminated shall receive earned vacation pay as computed in paragraph one of this Article on the pro-rata basis of one-twelfth (1/12th) of such pay for each month worked beyond his anniversary date of employment.

4. Vacation allowance or pay is to be figured on the basis of the employee's regularly scheduled work week exclusive of any overtime, and his average hourly straight time rate paid during the four (4) preceding work weeks in the case of refineries and Sinclair Research Laboratories, Inc. and in pipe line and producing operations the two preceding pay periods prior to the beginning of the employee's vacation.

5. Any employee laid off through reduction of forces or for any reason beyond his control and re-employed within one (1) year shall be considered a regular employee in regard to vacation rights but shall forfeit one-twelfth (1/12th) of his vacation pay for each month lost during the year. No employee shall be forced to take his vacation due to a shutdown.

6. Time lost through absences during which an employee is not in receipt of wages shall be accumulated, and, if in the aggregate such absences equal or exceed twenty-two (22) scheduled work days, an em-

ployee's vacation allowance or wages shall be reduced one-twelfth (1/12th) for each twenty-two (22) work days of absence. This provision, however, shall not apply to:

(a) Processing and handling of employee grievances and arbitration proceedings, or

(b) Attending annual Union convention, Employer national or supplemental contract negotiations, or

(c) Leaves of absence as covered by Article XXIX, Section 1, of this Agreement, or

(d) The waiting period provided in the Sickness and Accident Disability Benefits Plan in "Appendix".

7. After having established vacation rights as herein provided, vacations will be given to employees whenever practicable on the dates asked for. The Employer, however, reserves the right to refuse to grant dates asked for if these dates conflict with plant operations. Vacation preference shall be granted on the basis of seniority when practicable. Vacation schedules will be posted not later than April 15th of each year.

ARTICLE X

Holiday and Sunday Pay

1. Any employee required to work on Sunday shall be paid at the rate of time and one-half unless Sunday is the employee's regularly scheduled work day.

2. Any employee actively on the pay roll but not required to work on

New Year's Day
Good Friday
Decoration Day
Independence Day
Labor Day

EXHIBIT A

Thanksgiving Day
Christmas Day
Presidential Election Day and General National Congressional Election Day, and Veterans' Day in the years when neither of these elections are held

shall receive pay at his regular straight time rate for the number of hours he would otherwise have been scheduled to work on such day. If any such holiday falls on Sunday, the following day shall be observed.

3. If any of the above holidays falls on an employee's regular day off, the employee will be given one day's pay at his regular straight time rate. In such cases, the unworked holiday hours shall not be included as hours worked for the purpose of computing overtime, and the day shall not be included in the count toward the seventh consecutive day worked.

4. To be eligible for unworked holiday pay, an employee must have been on active duty and have worked the hours required on his last regularly scheduled work day preceding the holiday or his first regularly scheduled work day following the holiday except in cases of excused absence or absences caused by personal illness or injury.

5. Any employee required to work on any of the above holidays shall receive his straight time rate of pay, and in addition, an amount equivalent to time and one-half his straight time rate of pay for the number of hours worked up to the number of his normal daily hours. If an employee is required to work hours in excess of the number of his normal daily hours on any of the above holidays, he shall be compensated at two times his straight time rate of pay for each additional hour worked.

6. Any employee who is requested to work on a holiday and who does not so work shall not be paid for the holiday.

7. Any employee who desires to lay off on Washington's Birthday or Veterans' Day in those years when it is not a paid holiday under Section 2 hereof, shall be permitted to do so.

ARTICLE XI

Sickness-Disability Benefits

Sickness and Accident Disability Benefits are set forth in the separate Agreement entitled "Appendix", the term of which is set forth therein.

ARTICLE XII

Funeral Allowance

1. In cases of death in the immediate family: i.e., wife, children, grandchildren, mother or father, brother or sister, mother-in-law or father-in-law, employees will be allowed the necessary time off not to exceed a total of three (3) scheduled working days at the rate of their regular permanent classified jobs, exclusive of overtime.

ARTICLE XIII

Jury Service

1. Employees who lose time from their regular schedule of work while serving on a jury shall be paid for such time lost at straight time rates without deduction for jury fees received by such employees.

ARTICLE XIV

Severance Pay

1. Any employee who is laid off or whose employment is severed through no fault of his own for a reason other than retirement

under Employees Retirement Allowance Plan shall be granted severance pay as follows:

(a) After actual service of one (1) year, one week's pay at his regularly scheduled hourly rate, exclusive of overtime.

(b) After actual service of two (2) years' and up to five (5) years' service, two (2) weeks' pay at his regularly scheduled hourly rate, exclusive of overtime.

(c) After actual service of five (5) years' and up to ten (10) years' service, three (3) weeks' pay at his regularly scheduled hourly rate, exclusive of overtime.

(d) After actual service of ten (10) years' or more, four (4) weeks' pay at his regularly scheduled hourly rate, exclusive of overtime.

2. Any employee who is laid off or whose employment is severed and granted severance pay pursuant to this Article and if re-employed and is laid off or his employment is severed again through no fault of his own shall be denied a second severance pay allowance unless his actual service since re-employment has been one (1) year or more.

ARTICLE XV

Travel Time-Expense Allowance

1. In producing and pipe line operations one Regular Place of Employment shall from time to time be designated for employees to report. In cases where employees are instructed to report to another place for work, transportation shall be supplied by the Employer or compensated for and such time spent in travel to and from the job shall be considered as hours worked.

2. When an employee is required to remain away from his Regular Place of Employment overnight to perform work to which he has been assigned, the Employer shall reimburse him for all necessary transportation and in addition pay a flat rate living expense of seven dollars and twenty-five cents ($7.25) each day while so assigned.

ARTICLE XVI

Moving Expense

1. In the event of permanent refinery shutdowns, when an employee exercises the continued employment privilege and thereby is compelled to move, the Employer will pay the cost of moving as defined and limited in Section 3 hereof.

2. In pipeline and producing operations, when an employee is demoted to a lower paid classification, promoted to a higher paid classification or is displaced by reason of seniority rules, and thereby is compelled to move, the Employer will pay the moving expenses as defined and limited in Section 3 hereof.

3. The cost of moving shall be confined to paying the costs of moving personal effects and household goods not to exceed a total of one hundred twenty dollars ($120.00).

4. When an employee is transferred from one property, district or plant to another at the specific instance and request of the Employer, and thereby is compelled to move, the necessary ordinary and usual expenses incurred by such employee in moving shall be borne by the Employer and the employee shall suffer no loss in pay for time lost in connection with making such a move.

EXHIBIT A

ARTICLE XVII
Clothing-Tools

1. The Employer agrees to replace or reimburse employees for clothing destroyed or rendered unfit for use, during the course of employment, by contact with acid, caustic or other chemicals or by fire, provided:

(a) the loss was not the result of negligence on the part of the employee;

(b) the employee was using available protective clothing or other such devices used in the performance of his normal duties;

(c) the employee immediately reports such loss to his foreman; and

(d) the clothing destroyed is surrendered to the foreman when the claim is presented.

If reimbursement is to be made, the Employer will consider purchase price, date of purchase and reasonable replacement value of the clothing destroyed at the time the loss occurred.

2. The Employer will, upon request, furnish gloves for welders and well servicing crews, and agrees to make available tools which the Employer deems necessary to carry on its operations.

ARTICLE XVIII
Collection of Dues

1. The Employer agrees to deduct from wages payable on the first pay date occurring in each month the regular monthly Union dues (only) of all employees in the bargaining unit who are members of the Union after receipt from each such employee of a signed and properly dated written dues deduction authorization on the form hereinafter set out in full. These authorizations for deductions shall be irre-

vocable in accordance with the terms of such order which shall be in the following form:

..... Company

You are hereby authorized and requested to hereafter deduct from wages earned by me during the last half of each month the dues as established by Local Union No. ..... of Oil, Chemical and Atomic Workers International Union, AFL-CIO, being my regular monthly dues, and remit such sum to said local, or its assignee Local, on or before the fifteenth (15th) day of the following month. This authorization shall be irrevocable for a period of one (1) year from the date hereof, or until termination of the collective bargaining agreement between Sinclair Refining Company, Sinclair Oil & Gas Company, Sinclair Pipe Line Company and Sinclair Research Laboratories, Inc. and Oil, Chemical and Atomic Workers International Union, AFL-CIO, which became effective June 15, 1957, whichever first occurs; and shall be automatically renewed and be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective bargaining agreement between the parties above set forth, whichever shall be the shorter, unless within fifteen (15) days prior to the termination date of the applicable collective bargaining agreement or within fifteen (15) days prior to each anniversary date of this authorization, I submit written and properly dated notice of revocation of this authorization to the Employer and the Union, such notice to bear my signature. If, at the time I give notice of revocation, there is no such collective bargaining agreement in effect, or if such collective bargaining agreement then in

EXHIBIT A

effect does not provide for the deduction of my Union dues, such revocation shall become effective immediately upon receipt. This cancels all prior dues deduction authorizations signed by me.

.....
(signature of employee)

Dated .....

2. Union agrees that each of its Local Unions to which union dues deductions are to be forwarded as provided in Section 1 above shall send a letter, signed by a duly authorized officer of the Local Union and bearing its official seal, to Employer's local payroll office with copy to the Employer's Industrial Relations Department in New York, advising Employer as to the amount of the monthly union dues for its members, as established under the Union's constitution and by-laws, and advising Employer of the correct post office address and designating the full and correct title of the Local and the Officer thereof to which all future dues deduction payments are to be made.

3. It is agreed that present dues deduction authorizations on file with the Company shall continue to be honored by the Company as provided under the terms thereof until the Local Unions at their discretion replace the old forms with the authorization form set forth in Section 1 above.

4. All employees not now members of the Union shall upon proper application and acceptance be permitted to join the Union on terms and conditions no less favorable than those generally prevailing at the time of application.

5. The management agrees that when men are being employed it will notify the local union so that it may send for consideration men having qualifications for the job or jobs to be filled.

ARTICLE XIX
Bulletin Boards

1. The Employer shall place bulletin boards on the properties in convenient locations. These boards may be used by the Workmen's Committees of the Union to post matters pertaining to its membership. No political notices of any kind may be posted on the bulletin boards.

ARTICLE XX
Classification Recommendations

1. It shall be the duty of the several Workmen's Committees hereinafter constituted to formulate a set of definitions covering recommended classifications of labor in various localities, such recommendations to be transmitted to the Oil, Chemical and Atomic Workers International Union, AFL-CIO, for submission by the Union to the Employer for early conference between the parties signatory hereto.

2. In the event that employer in refineries modifies existing units to the extent of changing the job content thereof or creates new jobs by building new units, the Employer shall give the Union advance notice of such modifications, or new construction, and shall afford the Union reasonable advance opportunity to discuss with the Employer before being placed in effect the classifications and rates which are to be established thereon. In the event of a dispute the unit may be placed in operation and the matter may be handled under Article XXVI hereof.

ARTICLE XXI
Physical Examinations

1. Employees shall not be required as a condition of employment to submit to a physical examination by a physician in the

pay of the Employer or its agents, but may furnish a certificate of current date from any reputable doctor of the employee's own choosing.

2. In the case of employees being absent from work due to illness or physical impairment they shall be readmitted to work upon the presentation of a certificate of physical fitness, signed by an accredited physician. This rule, however, shall not limit the right of the Employer to require physical examination by a physician in the Employer's service in exceptional cases or in cases of constantly-recurring absence from duty. However, there shall be no arbitrary or discriminatory denial of the right of an employee to return to work, and any denial which does occur shall be for good cause.

3. In case a dispute arises over the physical fitness of an employee to return to work, or to continue to work, a Board of three (3) physicians shall be selected, one (1) by the Employer, one (1) by the employee, and a third selected by the first two (2). This Board shall act, examine the employee, and render its final decision within fifteen (15) calendar days from the date the creation of the Board was requested in writing by the employee or the Union.

Employer and Union agree they will attempt to reach a mutual understanding, for presentation in writing to the third physician selected for the Board, with respect to the physical requirements demanded of the employee while in Employer's employ. If such a mutual understanding cannot be reached, Employer and Union will separately submit in writing, to the third physician selected for the Board, their respective views concerning the physical requirements demanded of the employee while in Employer's employ.

A written decision by any two (2) of the

three (3) physicians shall be final and binding. Should two (2) members of the Board of Physicians be unable to agree, then the decision of the third physician selected as above shall constitute the decision of the Board. The expense of the third physician shall be borne equally between the parties. If the case be settled in favor of the employee, he shall be made whole for any income lost between the date of the receipt of the employee's or Union's written request and the Board's final decision.

4. In case of dispute over the physical condition or fitness of any employee, injured on the job, the Company agrees to join with the employee in a written request to the examining physician to make available for inspection, to the employee or the employee's physician, such medical records and X-rays as relate to the injury giving rise to the dispute.

5. Applicants for employment shall be examined by a reputable physician chosen by the Employer.

6. In the event an employee, in the opinion of Employer, becomes physically incapable of performing his regular duties as a result of sickness or accident, Employer will attempt to assign such employee to work he is physically capable of performing within the plant or seniority district in which he is regularly employed if, in Employer's judgment, proper work is available for which the employee is otherwise qualified. An employee so assigned shall receive the established rate for the work performed. Such employee will be returned to his former regular duties when Employer has determined that he is capable of performing them.

ARTICLE XXII
Discharge Account of Accident

1. An employee shall not be discharged,

if physically and mentally capable of continuing his duties, on account of any accident unless the accident was caused by the negligence, carelessness or malicious intent of the employee.

ARTICLE XXIII
Inspection of Equipment and Safety Hazards

1. Inspection of all equipment throughout any plant or place of employment shall be made by the superintendent or other person designated by the Employer from time to time, especially on pressure stills in the refineries, in gas plants, in and around drilling equipment and other places where explosions, fires or industrial accidents are likely to result in a loss of life or injury to employees. An inspection of any equipment may be secured upon the recommendation of the workman employed on such equipment. The local workmen's committee may make written suggestions to the superintendents or their representatives as to the elimination of hazards in order to prevent accidents.

2. No employee shall be required to perform services that seriously endanger his physical safety, and his refusal to do such work shall not warrant or justify discharge. In all such cases an immediate conference between the Employer and the Union shall be held to settle the issue in question.

3. In each refinery there shall be a management safety committee and not more than two (2) employees selected by the Workmen's Committee who shall be members of such safety committee to discuss and study safety.

ARTICLE XXIV
Contract Work

1. On pipe lines, in production and in

gasoline plants, it is agreed that any classified work customarily performed by employees of the Employer, for the performance of which equipment and present or laid-off employees are available, shall not be contracted out. Whenever new production is being developed, roustabout and well-pulling work shall be performed by employees of the Employer.

2. In refineries, it is agreed that any classified work customarily performed by employees of the Employer shall not be contracted out as long as the Employer has the necessary equipment and so long as there are qualified employees available from among present or laid-off employees. This, however, shall not apply to major construction jobs or to the installation or construction of special or patented equipment not ordinarily installed by the Employer. The Employer in such cases will advise contractors when qualified employees are available for work on these special installations.

3. Employees granted leaves of absence to work for a contractor performing services for the Employer shall retain their seniority on the same basis as though they had continued to work for the Employer.

ARTICLE XXV

Conferences

1. Employees shall be paid one and one-half (1½) times their regular rate in the event that they are called in conference by an Employer representative at any time other than their regular working hours.

2. The employer agrees that employees will be compensated for time lost during their regular scheduled work day, at their regular straight time rate of pay, when discussing grievances with the local management as per Section 2, Sub-section (b) of Article XXVI. It is understood, however,

that such compensation shall be limited to a reasonable number of employees, the number to be agreed upon between the Local Workmen's Committee and local management.

ARTICLE XXVI
Grievance and Arbitration Procedure

Definition

1. A grievance is defined to be any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations.

Grievance Procedure

It is the sincere desire of both parties that employee grievances be settled as fairly and as quickly as possible. Therefore, when a grievance arises, the following procedure must be followed:

2. For the purpose of adjusting employee grievances and disputes as defined above, it is agreed that any employee, individually or accompanied by his committeeman, if desired shall:

(a) Seek direct adjustment of any grievance or dispute with the foreman under whom he is employed. Such meeting will be without loss of time to the employee and/or his committeeman during regular working hours for time spent in conference with the foreman. The foreman shall reply to said employee within three (3) working days (Saturday, Sunday and Holidays excluded) from the date on which the grievance was first presented to him;

(b) If the question is not then settled, the employee may submit his grievance in writing, on forms supplied by Union, to a committee selected as hereinafter provided for the particular plant or region in which such employee is employed. Such committee shall investigate said complaint and if in its opinion the grievance has merit it shall have the right to meet with the

local company superintendent or his representative, who shall receive the committee for this purpose. Written decisions shall be made by the local superintendent or his representative within ten (10) days after meeting with the committee, provided that prior to the time of or at the meeting with the committee such complaint or grievance has been submitted in writing to the local superintendent or his representative.

(c) In exceptional cases, Workmen's Committees shall have the right to institute grievances concerning any alleged violation of this Agreement by filing written complaint with the official locally in charge.

(d) Any grievance filed with or by the local Workmen's Committee can only be withdrawn with the Workmen's Committee's consent.

3. No complaint or grievance shall be considered hereunder unless it is presented to the superintendent or official locally in charge within sixty (60) days from the date on which the complaint or grievance arose, or from the date on which the employee or employees concerned first learned of the cause of complaint.

4. The committee above mentioned shall be selected from among and by employees of the Employer who are members of the Union. No official, foreman, or employee having authority to hire or discharge men shall serve on the committee.

5. In case of discharge or lay-off, employees who may desire to file complaints must present such complaints within one (1) week after the effective date of discharge or lay-off to the committee mentioned in this Article. Before any such employee is to be discharged for cause, other than flagrant violation of rules, or is to be laid off, he shall be given a written notice, dated and signed by his foreman or other representative of the Employer, setting forth the reason for such discharge or lay-off. In the event an employee has been discharged for a

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flagrant violation of a company rule, he shall subsequently, upon request, be given a written notice, dated and signed by his foreman or other representative of the Employer setting forth the reason for such discharge. The Workmen's Committee will be furnished with a copy of the statement furnished to the employee, both where the discharge or lay-off is for cause or for flagrant violation of a Company rule. Any grievance to be filed under this section must be filed within forty (40) days from the effective date of the discharge or lay-off.

6. In the event the decision of the superintendent or his representative shall not be satisfactory to the committee, it is agreed that the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, or someone designated by him, shall, not later than forty-five (45) days after such decision, have the right to confer with the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, for the purpose of discussing grievances or disputes and of obtaining decisions thereon. It is agreed that the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, shall render a decision to the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, within twenty (20) days after grievances or disputes have been so submitted to him in writing.

7. If such decision is not satisfactory, then, upon request of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO and within sixty (60) days from the posting date of the final appeal answer, there shall be set up a local Arbitration Board, and such grievances and disputes submitted to it within ten (10) days after

formation of such Board. Such local boards may be set up at each refinery to deal with cases arising therefrom; cases arising from Sinclair Oil & Gas Company shall be heard and determined at Tulsa, Oklahoma: Fort Worth, Texas; Midland, Texas; or Casper, Wyoming; cases arising from Sinclair Pipe Line Company shall be heard and determined at the cities previously named or at Kansas City, Missouri; Toledo, Ohio; Houston, Texas; Chicago, Illinois; Philadelphia, Pennsylvania; or Independence, Kansas. These local Arbitration Boards shall consider only individual or local employee or local committee grievances arising under the application of the currently existing agreement, or supplements thereto, and local wage and classification disputes submitted on the initiative of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. In this connection, Employer agrees to give consideration to local classification rate inequity complaints existing by reason of a comparison with the average of competitive rates of pay for like jobs having comparable duties and responsibilities being paid by agreed-upon major competitive companies in the local area. Such requests for adjustments of classification rate inequities, if any, shall be made not more frequently than twice annually, to be effective on February 1st and August 1st. Such requests to be submitted at least thirty (30) days prior to such semi-annual dates.

8. The above mentioned local Arbitration Board shall be composed of one person designated by Employer and one designated by the President or District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. The board shall be requested by both parties to render a deci-

sion within seven (7) days from date of submission. Should the two members of the board selected as above provided, be unable to agree within seven (7) days, or to mutually agree upon an impartial third arbitrator, an impartial third member shall be selected within seven (7) days thereafter by the employer or employee member of the Arbitration Board, or such two parties jointly, requesting the Federal Mediation and Conciliation Service to submit a panel of arbitrators from which the third member of the board will be selected in accordance with the procedure of such Federal Mediation and Conciliation Service.

9. The decision of the Board aforesaid, as provided in Section 8 hereof, shall be final. However, if the rules and conditions existing at the time a given case originated are subsequently changed, it is understood that the arbitration award rendered under former rules and conditions shall not act to prohibit consideration of a complaint originating under the changed rules and conditions.

10. Cases arising from the Gasoline Plants shall be considered as coming within the Producing Division in which they are located.

11. The fee and expense of the impartial arbitrator selected as above provided shall be divided equally between the parties to such arbitration. The Parties agree to attempt to hold the arbitrator's fees to a reasonable basis.

ARTICLE XXVII
General Disputes

1. In the event any dispute or disagreement arises between the parties hereto regarding wages, hours or working condi-

tions, which is general in character, or which affects a large number of employees of any one of the Employers to which this agreement is applicable, such dispute shall be referred for settlement to the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, and the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, or someone designated by him.

ARTICLE XXVIII
Discrimination

1. There shall be no discrimination of any kind against any member of the Union by any person in the employ of the Employer.

2. There shall be no discrimination against any member of the Union with respect to benefits derived or to be derived from membership in any group insurance plan, stock purchasing plan, benefit plan or pension plan established by the Employer for employees as a whole, either as now in existence or as established or changed in the future.

ARTICLE XXIX
Leave of Absence

1. If an employee desires to be off on personal business (not emergencies), he may do so subject to the approval of the management so long as he does not desire to be off over two (2) work weeks and provided that he gives local management twenty-four (24) hours notice of his desire to be absent and the length of time he desires to be off. Upon completion of such leave he will resume employment on the basis of uninterrupted service.

2. If any employee who has been elected or appointed an officer or representative of the Local or International Union, and

who is covered by this agreement, desires an extended leave of absence (exceeding thirty (30) days and not more than one (1) calendar year) in order to engage in any work pertaining to the business of the Union, such leave will be granted, provided, however, that no more than four (4) employees from each refinery or seniority district of the pipeline and producing operations and two (2) employees from the Sinclair Research Laboratories, Inc. will be granted such extended leaves of absence per year and they must give the Employer five (5) days' written notice. The extended leave of absence will be renewed at the request of the Union for such employees who are re-elected or re-appointed as officers or representatives of said Local or International Union. Employees shall not be eligible for extended Union leaves of absence until they have completed six (6) months of continuous service.

3. In each refinery and Sinclair Research Laboratories, Inc. and in each seniority district in pipeline and producing operations, if any employee covered by this agreement desires a limited Union leave of absence (not to exceed thirty (30) calendar days), such leave will be granted by the Employer, provided, however, not more than five (5) employees from each refinery or seniority district shall be granted such leaves at any one time.

4. Any employee who has been granted Union leave of absence pursuant to this Article shall resume employment on the basis of uninterrupted service.

5. It is agreed that employees who have been or who may be assigned by the Employer to temporary duties outside of the continental limits of the United States, shall retain their seniority position status and

shall accumulate seniority during such approved periods of leave, subject, however, to the following:

(a) It is intended that an employee granted a foreign duty leave of absence shall, during such period of leave, continue to accumulate seniority and employment rights in the operations covered by this agreement and that, upon satisfactory completion of the foreign duty assignment, the employee be re-employed and reinstated in the classification he vacated to accept said foreign service, provided such re-employment and reinstatement is consistent with the seniority applications in effect. It is not intended that such an employee should have any right in excess of that to which he would have been entitled had he remained employed in the operations covered by this agreement and he shall not have re-employment rights if an employee senior in service has involuntarily lost his re-employment rights pursuant to Section 6 of Article V.

ARTICLE XXX

Military Leave-Pay

Section 1. During the term of this Agreement

(a) any employee who is in active service of the employer and has had more than forty-five (45) days of continuous service and volunteers, is drafted, or is called for active duty in the Armed Forces of the United States, the Coast Guard or Public Health Service, or is drafted in the Merchant Marine Service, or

EXHIBIT A

(b) any employee in a lay-off status under the provisions of Article V, Section 6 of this Agreement who is recalled for re-employment by Employer and it is thereafter determined that he has previously volunteered, been drafted or been called for active duty in the Armed Forces of the United States, the Coast Guard or Public Health Service, or is drafted in the Merchant Marine Service,

shall, in accordance with existing law, be entitled to re-employment on the basis of his seniority accumulated at the time of his Honorable Discharge or Discharge Under Honorable Conditions from such service, provided he is physically and mentally able to do the work required and reports for work with a certificate of one of said discharges within 180 days after such discharge or final release from medical treatment. In the event his former job no longer exists he shall be placed in a position to which he is entitled in accordance with the seniority rules existing at his place of employment.

Section 2. Employees granted military leave of absence while in the service of the Employer shall receive the following lump sum payments upon acceptance for active service:

(a) Over six months of service but less than five years of service: one month's pay;

(b) Five years of service but less than ten years of service: one and one-half month's pay;

(c) Ten years of service and over: two months' pay.

Calculation of the foregoing amounts shall be on the basis of average straight

time earnings for the two payroll periods immediately preceding the time that the military leave of absence began.

Section 3. In addition to the above payments, employees so accepted shall receive the amount of earned vacation pay accrued up to the date that the military leave of absence began.

Section 4. Employees who are granted a military leave of absence and who receive the benefits provided for herein may not again be eligible for benefits in those cases where they return to active employment and are later granted another leave of absence by reason of recall, reinduction or re-enlistment.

Section 5. Any employee who is a member of the Armed Forces Reserves and is required to participate in the annual training program shall be paid the difference between his regular straight time rate of pay and the amount received from the Government during the period of such annual training not to exceed three (3) weeks.

ARTICLE XXXI

Management's Rights

The Union recognizes that operation of the Employer's facilities and the direction of the working forces, including the right to hire, suspend or discharge for good and sufficient cause and pursuant to the seniority Article of this agreement, the right to relieve employees from duties because of lack of work, are among the sole prerogatives of the Employer; provided, however, that this section will not be used to discriminate against any member of the Union and such suspensions and discharges shall be subject to the grievance and arbitration clause of this working agreement; provided, further, this section shall not

act to interfere with the Union's rights as elsewhere set forth in this agreement.

ARTICLE XXXII
Separability

1. Should any part hereof or any provision herein contained be rendered or declared illegal by reason of any existing or subsequently enacted legislation or by a decree of a court of competent jurisdiction or an unfair labor practice by final decision of the Labor Relations Board, such invalidation of such part or portion of this agreement shall not invalidate the remaining portions hereof. Nothing herein shall be construed to impair or abridge the right of either party hereto to appeal the court decrees or decisions of National Labor Relations Board.

Agreed to at New York, New York, this 8th day of August 1957.

SINCLAIR REFINING COMPANY
By J. E. DYER,
President.

SINCLAIR OIL & GAS COMPANY
By H. B. SMITH,
Chairman of the Board.

SINCLAIR PIPE LINE COMPANY
By EARL W. UNRUH,
President.

SINCLAIR RESEARCH LABORATORIES, INC.
By W. M. FLOWERS,
President.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO
By O. A. KNIGHT,
President.

"APPENDIX"

Sickness and Accident Disability Benefits Plan

Whereas, Sinclair Refining Company, Sinclair Oil & Gas Company, Sinclair Pipe Line Company and Sinclair Research Laboratories, Inc. (herein called "Employer") and Oil, Chemical and Atomic Workers International Union, AFL-CIO, (herein called "Union") have concluded their negotiations and embodied their understanding in the Articles of Agreement effective June 15, 1957, and

Whereas, Employer and Union have agreed that Sickness and Accident Benefits will be covered in a separate agreement in the form of an Appendix to the new Articles of Agreement and shall be known as the Sickness and Accident Disability Benefits Plan (herein called the "Plan") established herein and set forth below.

Now, Therefore, it is agreed as follows:

1. All regular employees shall receive wages during periods of physical disability by reason of sickness or injury, subject to the following rules and regulations.

This plan shall not be considered as requiring the Employer to change any sick-pay allowances now in effect for monthly-rated employees.

2. **Employees Eligible.** All regular employees must first complete six (6) months of continuous service, i.e. without an interruption, other than excused absences, exceeding one hundred eighty (180) days (including returned war veterans with six (6) months or more of accumulated service), to become eligible to receive the benefits of this Plan.

3. **Schedule of Benefits.** An eligible employee shall be entitled to maximum benefit payments as hereinafter provided:

LENGTH OF SERVICE	MAXIMUM BENEFITS *Full Pay*	*Half Pay*
Less than 6 months	None	None
6 months but less than 1 year	1 week	None
1 year but less than 5 years	4 weeks	10 weeks
5 years but less than 10 years	8 weeks	28 weeks
10 years and over	12 weeks	40 weeks

Benefits payable shall be reduced by the amount of any Federal or State Statutory disability benefits or any other payments from the Employer, which the employee may receive in connection with a disability covered under this Plan.

Benefits payable shall also be reduced by any sums which the Employer is expressly authorized or legally required to withhold.

In exceptional cases where the period of illness exceeds the maximum, the Employer will consider the allowance of additional sick payment, giving consideration to the special conditions of each case.

4. **Industrial Accidents.** An employee necessarily absent from work due to an industrial accident shall receive the Full Pay benefits for the period provided in Section 3 hereof less Workmen's Compensation provided under State Laws. Upon exhaustion of such Full Pay benefits, an employee, whose absence due to industrial accident is of necessity continued, shall, in lieu of the Half-Pay provisions of Section 3, be compensated for the number of weeks during which Half-Pay is specified therein for the difference between Full Pay and Workmen's Compensation payable during that portion

of such period as he shall be entitled to Workmen's Compensation payments.

Upon acceptance of any lump sum settlement of a Workmen's Compensation claim, the provisions of this Section shall no longer apply.

The Employer's obligation under this Plan in an industrial accident case shall be fully discharged when the employee returns to work or when the appropriate maximum benefit has been exhausted, notwithstanding the provisions of Section 10 of this Plan.

5. **General Provisions.** The term "week" as used herein shall cover only the number of normally scheduled working days in a calendar week applicable to the individual employee.

6. No benefits will be paid employees for the first two (2) scheduled working days of any period of absence for personal sickness or injury. However, such waiting period will not apply in industrial accident cases or, in addition, in non-occupational disability cases where (a) the employee is hospitalized during any part of the period of his absence or (b) the employee, upon his return to work or during the course of his disability, produces a certificate by a reputable physician showing that the employee had been under the care of said physician from the first day for an illness or injury which rendered him unfit to work during the period of his absence.

7. The above benefits are not cumulative. Unused benefits during any calendar year may not be carried over into any subsequent calendar year.

8. Payments of wages during periods of physical disability shall be based on the employee's normal working schedule. In computing the number of days' pay an em-

ployee is entitled to receive under this Plan in any calendar year, pay allowance will be made for the actual number of normally scheduled working days within the period of such absence. Any pay for overtime work shall not be considered in determining rate of wages for the purpose of disability payments hereunder.

9. The pay during absence shall be at the rate the employee would have received had he continued to work.

10. If an absence due to illness or accident extends from one calendar year to another, the period of absence in each calendar year shall be charged only against the benefits to which the employee is entitled for that calendar year.

11. Employees shall not be entitled to pay allowances under this Plan in cases where illness or accident occurs while employee is on vacation, on leave of absences, or absent due to layoff. However, should an illness or injury originate during a regular vacation period and carry over until after the vacation period, the employee shall be entitled to pay allowance as a result of such illness or injury in the same manner as though the illness or accident originated on the date of his scheduled return to active duty.

12. An employee shall not be entitled to pay allowance under the Plan when sickness or injury is due to use of drugs, intemperance, unlawful acts, or injuries received in a brawl or a fight.

13. In cases of proven malingering, an employee shall be deprived for one (1) calendar year of all sick benefits under the Plan.

14. For the purpose of determining the amount of benefits hereunder, the Employer's records with respect to continuity of service and rate of wages shall be conclusive.

15. In order to qualify for benefits under this Plan, employees must, if required, present evidence satisfactory to the Employer, showing that an absence is due to illness or accident within the meaning of this Plan. The Employer reserves the right, as a condition of payments hereunder, to have an examination made and the treatment checked by a physician or other agent of its own selection.

16. Pay allowance granted under this Plan shall terminate upon the death of an employee or upon termination of his services for any reason.

17. The Sickness and Accident Disability benefits to which employees are entitled as of the effective date of the Plan shall be determined on the basis of crediting the employee with the benefit bank provided in the Plan

less, in the case of non-occupational disabilities, the amount of sickness-disability benefits paid to the employee prior to the effective date of the Plan but subsequent to January 1, 1957; and

less, in the case of occupational disabilities, the amount of disability bank benefits paid subsequent to the date of the accident for which benefits are being paid.

18. The Plan shall be subject to the Grievance and Arbitration Procedure of the Articles of Agreement.

19. The Plan shall become effective June 15, 1957, and will continue in effect without change to June 14, 1958, and thereafter, subject, however, to the right of either party, after serving sixty (60) days written notice upon the other party, on or after April 15, 1958, to indicate its desire to reopen the Plan for further collective bargaining for the purpose of modifying, amending, extending or terminating the Plan.

EXHIBIT A

Agreed to at New York, New York, this 8th day of August, 1957.

SINCLAIR REFINING COMPANY
By J. E. DYER,
President.

SINCLAIR OIL & GAS COMPANY
By H. B. SMITH,
Chairman of the Board.

SINCLAIR PIPE LINE COMPANY
By EARL W. UNRUH,
President.

SINCLAIR RESEARCH LABORATORIES, INC.
By W. M. FLOWERS,
President.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO
By O. A. KNIGHT,
President.

SINCLAIR REFINING COMPANY
600 Fifth Avenue
New York 20, N.Y.

June 15, 1957

Mr. B. J. Schafer, Vice President
Oil, Chemical and Atomic Workers
International Union, AFL-CIO
P. O. Box 2812
Denver 1, Colorado

Dear Mr. Schafer:

During negotiation of the Articles of Agreement, which became effective June 15, 1957, the parties agreed that the specified amounts of shift differentials appearing in Article VIII of the Agreement shall be set forth in this Letter of Understanding.

As previously agreed, the amount of shift differentials, until changed as provided below, shall be:

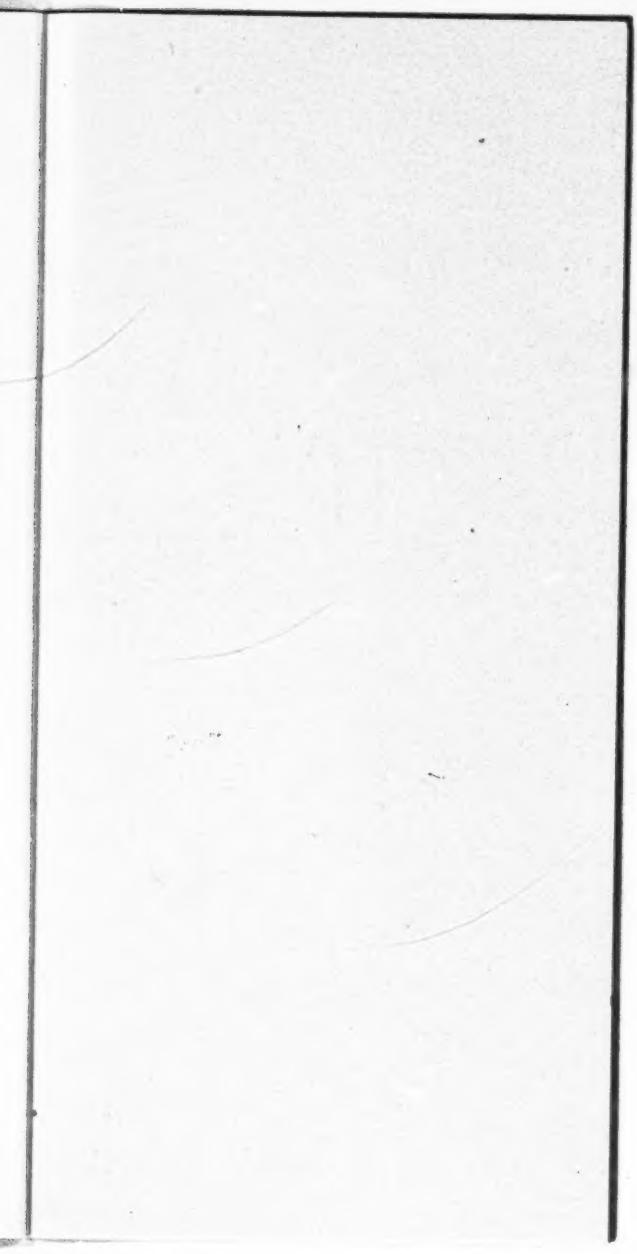
Second (evening) shift—eight cents (8¢) per hour

Third (night) shift—sixteen cents (16¢) per hour

It is recognized by the parties to the Agreement that changes in the amounts of shift differentials have tended to occur, as do changes in wages, at times when there is a general movement in the Petroleum Industry. Thus, the procedure which applies to changes in wages under such conditions may appropriately be extended to include changes in shift differentials.

Therefore, when there is a general movement in the industry to increase or decrease the amount of shift differentials, negotiations for the purpose of revising the amount of such differentials may be initiated by either party. In the event such modification is desired either party may give written notice to the other party that a general dispute exists within the meaning and intent of Article XXVII of the Articles of Agreement. Within

25] Exhibit A



[fol. 89]

IN THE UNITED STATES DISTRICT COURT

ALTERNATIVE MOTIONS TO DISMISS THE ACTION, STRIKE THE COMPLAINT, OR MAKE THE COMPLAINT MORE DEFINITE AND CERTAIN—Filed May 8, 1959

Now come the Defendants in the above-entitled cause, by Abraham W. Brussell and David M. Cohen, their attorneys, and they and each of them respectfully make the following motions to this Court, in the alternative:

1. The defendants move that the Court dismiss the action against the defendants and against each and every one of them; or in the alternative;

2. The defendants move that the Court strike the Complaint against each of the defendants and against each and every one of them;

As reasons in support of the said motions, the defendants show to the Court the following:

(a) There are no facts stated in the Complaint, showing any cause of action against any of the defendants, which would give this District Court jurisdiction, except a possible claim under Section 301 of the Labor Management Relations Act (hereinafter referred to as "LMRA"), against the defendant Unions for breach of a collective bargaining agreement. The Complaint does not plead facts sufficient to charge said Unions with breach of a collective bargaining agreement.

(b) Under Section 301 of the LMRA, no cause of action of any kind is given or allowed against any individual defendant, but on the contrary, said provision is directed solely against a Union that is party to a collective bargaining agreement.

(c) Section 301 of the LMRA is the exclusive remedy [fol. 90] for violations of a collective bargaining agreement, and therefore no action can be maintained against individuals for violation of such an agreement under the

diversity of citizenship jurisdiction of the Federal District Courts.

(d) There are no facts stated in the Complaint, nor allegations made, showing that the plaintiff has complied with all of the conditions required, by it to be performed or satisfied for the purpose of permitting it to maintain an action for breach of contract.

(e) There are no facts stated, nor allegations made in the Complaint, sufficient to warrant the maintenance of any action for tort against defendants or any of them.

(f) Under Section 301 of the LMRA, the Government of the United States has demonstrated its intent to permit an action for breach of contract for alleged violation of a no-strike clause; such action is exclusive, and does not permit any state to maintain an action in tort for the same conduct which under federal legislation permits and warrants an action for breach of contract.

(g) Jurisdiction based upon diversity of citizenship does not lie here against the various defendants, because it is not sufficiently alleged that the action against each defendant for either contract or tort involves the requisite Ten-Thousand-Dollar-jurisdictional requirement of the diversity provisions of the United States Judicial Code.

(h) The Complaint on its face discloses that the plaintiff failed to comply with the condition precedent of processing its claim here against the Unions or against the individual defendants in accordance with the terms of the grievance procedure, set out in Article XXVI of the collective bargaining agreement attached to the Complaint.

(i) Complaint on its face discloses that the Court should stay the proceedings herein, because of the provisions of the United States Arbitration Act.

[fol. 91] (j) The Complaint on its face discloses that the plaintiff is attempting to sue the defendants for exercise of the rights guaranteed them under Section 7 of the LMRA.

(k) The Complaint on its face discloses that the District Court has no jurisdiction, because the matters com-

plained of constitute or involve unfair labor practices over which the National Labor Relations Board has exclusive jurisdiction under the terms and provisions of the LMRA.

(l) The Complaint on its face discloses that the District Court has no jurisdiction to issue a declaratory judgment or injunction or other form of mandatory relief against the Unions or individual defendants, under the provisions of the Norris-LaGuardia Act, the Clayton Act, the LMRA, and the Thirteenth Amendment to the Constitution of the United States.

(m) On the face of the Complaint, the plaintiff improperly seeks to circumvent and vitiate its obligations, under the aforesaid collective bargaining agreement, to settle disputes through the grievance and arbitration procedure, in violation of the LMRA, the Norris-LaGuardia Act, and the Clayton Act. The labor disputes alleged in Paragraph 9, Sub-Paragraphs (a)-(i), of Count III of the Complaint, have either been settled or are in the process of resolution through the grievance procedure set forth in Article XXVI of the collective bargaining agreement. This fact is substantiated by the Affidavit attached to this Motion, and marked Exhibit "A", and is made a part hereof.

(n) The Complaint improperly attempts to join causes of action against various parties for alleged breach of contract, alleged tort, alleged equity claims action, and alleged representative proceeding. There is no common cause, of law or fact, within the meaning of the rules [fol. 92] of the Federal Rules of Civil Procedure, which would warrant a joining of the several separate and distinct causes of action in one Complaint.

Abraham W. Brussell, David Cohen, Attorneys for said Defendants.

Brussell & Gross, 318 West Randolph Street, Chicago 6, Illinois, RAndolph 6-2922; David Cohen, 2102 Broadway, East Chicago, Illinois, EXport 7-7100, Of Counsel.

IN THE UNITED STATES DISTRICT COURT

MOTION TO STAY ACTION—Filed May 8, 1959

Now come the Defendants in the above-entitled cause, by Abraham W. Brussell and David M. Cohen, their attorneys, and respectfully move that this action be stayed for the following reasons:

1. All of the issues in the above-entitled suit are referrable to arbitration, under an agreement in writing for such arbitration between the parties to this lawsuit, pursuant to the United States Arbitration Act, and the Labor Management Relations Act.

2. Article XXVI of the collective bargaining agreement, attached to the Complaint, provides for the adjustment of disputes between the parties to the agreement.

3. The plaintiff and the Oil, Chemical, and Atomic Workers International Union, AFL-CIO, and Local 7-210 of the Oil, Chemical, and Atomic Workers Interna- [fol. 93] tional Union, AFL-CIO, are presently agreed to submit the issues raised in the Complaint, to the grievance procedure, and, if need be, to impartial arbitration, pursuant to Article XXVI of the aforesaid collective bargaining agreement. The issues raised by said grievance involve:

(a) The right of the plaintiff to take any form of disciplinary action against officials of Local 7-210 for allegedly participating in, fomenting, and assisting in the work stoppage alleged in Count I of plaintiff's Complaint;

(b) Whether the defendant Unions or any other defendant of the above-entitled lawsuit violated the aforesaid collective bargaining agreement in connection with the alleged work stoppage;

4. At no time during all the events alleged in the Complaint, did any of the defendants fail to follow the procedure for settlement and arbitration of grievances and labor disputes, pursuant to Article XXVI of the aforesaid collective bargaining agreement.

5. The affidavit, attached to this Motion, and marked Exhibit "A", is made a part hereof.

Wherefore, the defendants respectfully move this Court to stay all proceedings herein until the parties have processed their grievances and disputes through the grievance procedure, and if need be, through arbitration.

Respectfully submitted,

Abraham W. Brussell, David Cohen, Attorneys for Defendants herein.

Brussell & Gross, David Cohen, Of Counsel.

[fol. 94]

EXHIBIT "A" TO MOTION TO STAY ACTION

State of Illinois,
County of Cook, ss.:

Affidavit

Tyler Swanson, being first duly sworn, on his oath deposes and states the following:

1. I am president of Local 7-210, Oil, Chemical, and Atomic Workers International Union, AFL-CIO (hereinafter referred to as "Local 7-210"), having held that position since January 1, 1957.

2. As the result of an alleged work stoppage which took place on February 13-14, 1959, the following grievances are now pending, pursuant to the grievance and arbitration procedure set forth in Article XXVI of the collective bargaining contract between Sinclair Refining Company (hereinafter referred to as the "Company") and Oil, Chemical, and Atomic Workers International Union, AFL-CIO:

(a) The illegality of disciplinary action, taken against the below-named individuals, as officials of Local 7-210, for allegedly fomenting, assisting, and participating in a strike or work stoppage, on February 13-14, 1959: A. F. Schilling, Sherman Moore, Samuel M. Atkinson, Zoltan Cziperle, John Reitz, Joseph Bundek, Charles Bainbridge, Mike Payer, Thomas F. Hicks, Dean Bainbridge, John J. Podraza, and Robert V. Dermody.

(b) The illegality of the Company's action, as justified by the Company because of the aforesaid alleged illegal work stoppage, in restricting the activity, movements, and processing of grievances by members of the Grievance Committee of Local 7-210, pursuant to Article XXVI and other provisions of the aforesaid collective bargaining agreement.

[fol. 95] The above-named individuals are the same-named individuals who are parties defendant to a lawsuit filed by Sinclair Refining Company *versus* Samuel M. Atkinson, et al., in the United States District Court for the Northern District of Indiana, Hammond Division.

All the above-named individual defendants in the aforesaid lawsuit are members of the aforementioned Grievance Committee.

3. The following alleged work stoppages and disputes, set forth in Count III, Paragraph 9, of the Complaint in the aforesaid lawsuit, have been disposed of by agreement between the Company and the Oil, Chemical, and Atomic Workers International Union, pursuant to the grievance procedure as set forth in Article XXVI of the aforesaid collective bargaining agreement: Sub-paragraphs (a), (b), (c), (d), (e), (g), and (h).

The alleged work stoppage and labor dispute, set forth in Count III, Paragraph 9(f) of the aforesaid Complaint, has also been settled by the aforesaid grievance procedure, except the question of compensation for one worker, which is the subject of a pending grievance.

The allegations, set forth in Count III, Paragraph 9(i) of the aforesaid Complaint, are the subject of the aforesaid grievances set forth in Paragraph 2 of this Affidavit, and of grievances filed by the three riggers for pay which was docked by the Company.

Tyler Swanson

Subscribed and sworn to before me this 6th day of May, A. D. 1959.

Gilbert Feldman, Notary Public.

(Seal)

[fol. 113]

IN THE UNITED STATES DISTRICT COURT

ORDER DENYING MOTIONS TO DISMISS ACTION, ETC.
—March 12, 1960

Defendants' alternative motions of May 8, 1959, to dismiss the action, strike the complaint, or make more definite, and the motion of May 8, 1959, to stay the action, are each of them hereby denied.

Enter:

Luther M. Swygert, Judge.

Hammond, Indiana, March 12, 1960.

[fol. 116]

IN THE UNITED STATES DISTRICT COURT

MOTION TO VACATE ORDER OF MARCH 12, 1960—
Filed March 18, 1960

Now comes Samuel M. Atkinson, et al., the defendants herein, by their attorneys and respectfully move the Court herein to vacate order of March 12, 1960, entered by Judge Swygert therein and grant a rehearing in full on each and all of the said issues in said cause.

In support of said motion, defendants present the affidavit of Abraham W. Brussell.

Abraham W. Brussell, David M. Cohen by AWB, William E. Rentfro by AWB, Attorneys for Defendants.

[fol. 117]

ATTACHMENT TO MOTION

State of Illinois,
County of Cook, ss.:

Affidavit.

Abraham W. Brussell, being duly sworn, makes his oath and deposes and says that he is one of the attorneys of record for all of the defendants in the said cause and that he is the attorney entrusted with the duty of conducting the proceedings in said cause; that as said attorney he caused to be prepared and filed certain motions on behalf of the defendants herein, mainly a motion to stay proceedings pending arbitration, motion to strike the complaint, motion to dismiss the complaint, etc., and caused briefs to be filed on behalf of the defendants herein in support of the said motion.

Affiant states that on Tuesday, March 15, 1960, he received herein copy of an order entered on March 12, 1960, signed by Judge Luther M. Swygert, the presiding Judge in this cause; that said order of March 12, 1960, overruled each and all of the motions of the defendants herein.

Affiant states that the questions of law presented by the said motions as reflected in the briefs filed by both parties herein and in the oral argument had before Judge Luther M. Swygert are questions of law where numerous authorities were cited by both of the parties herein. Affiant further states that some, but not all, of these questions of law had been previously presented in a matter had before Judge Swygert wherein your Affiant, as attorney for other defendants, took an appeal to the Court of Appeals for the Seventh Circuit in a cause entitled, *American Smelting and Refining Company* v. *United Steelworkers of America, AFL-CIO, et al.,* Cause No. 12651; that in said cause the Court of Appeals ruled that although an appeal would lie from an order overruling a motion to stay in the [fol. 118] nature of an appeal from an order denying a temporary injunction that reflect in the particular cause before it, the questions were moot because the matters involved in the motion to stay proceedings pending arbi-

tration had been decided by an arbitrator pending the hearing of the appeal and that such ruling made the litigation moot. In that case, the Court of Appeals therefore found it unnecessary to pass upon other questions of law which are either substantially similar and in some respects, identical to many of the questions of law presented by the motions filed by the defendants herein, overruled by Judge Swygert in his order of March 12, 1960.

Affiant states that Judge Luther M. Swygert is outside the boundaries of the United States and that he has been advised that Judge Swygert will not return to this country or take up the call or resume his duties as District Judge until approximately five (5) weeks have elapsed after March 12, 1960.

Affiant further states that Judge Swygert had left the country before affiant was advised of the ruling of Judge Swygert as reflected in his order of March 12, 1960.

Affiant states that as a matter of his professional obligation to his clients, he is of the opinion that for the protection of their rights in this cause and for the purpose of the ultimate termination of the litigation that he has advised them, in substance, to the effect that they should bring before the Court of Appeals for the Seventh Circuit for determination by that Court the questions of law presented by the several motions filed herein; that a difficult question of procedure as to the taking of an appeal that would not be fruitless in the sense that the Court of Appeals would rule that such an appeal was moot exists by virtue of the fact that Judge Swygert is out of the country. If, under the provisions of Title 28, U. S. C. A., Section 1292(b) a procedure is available that, in substance, [fol. 119] would permit an appeal from the order of Judge Swygert insofar as it overruled the motion to strike and motion to dismiss the action, such procedure would first require, as a condition preceding a recital in the order overruling such motions that would satisfy the requirements of Title 28, Section 1292(b), and further, that the Court of Appeals, in its discretion, would grant such an appeal provided application therefor were made to it within ten (10) days from the date of the order overruling the

motion and containing the findings required by Section 1292(b).

Affiant states that the record in the case at bar shows that the order involves controlling questions of law as to all three counts, or in the alternative, one or more of such counts as to which there is substantial ground for difference of opinion. Affiant further states that if this proceeding will go to trial there will be lengthy, expensive litigation with the ultimate termination extended long into the future.

Affiant respectfully suggests that for the purpose of avoiding a miscarriage of justice and for the purpose of permitting defendants to exercise the rights had under Section 1292(a) and (b), that the order of March 12, 1960, denying each and all of defendants' motions herein be vacated and set aside, and that a hearing be granted on all of the issues made by defendant's motions previously filed herein.

Further affiant sayeth not.

Abraham W. Brussell.

Subscribed and sworn to before me, a notary public, this ..... day of March, 1960.

.....

Notary Public.

[fol. 122]

IN THE UNITED STATES DISTRICT COURT

MOTION TO AMEND ORDER OF MARCH 12, 1960—
Filed March 18, 1960

Now come Samuel M. Atkinson, et al., the defendants herein by their attorneys and respectfully move the Court to amend the order entered herein on March 12, 1960; that the order as amended shall contain a provision that said order so amended involves a controlling question of law as to which there is substantial ground for difference of an opinion, and that further, an immediate appeal from the

said order, as amended, may materially advance the ultimate termination of the litigation.

In support of said motion, defendants present the affidavit of Abraham W. Brussell.

Abraham W. Brussell, David M. Cohen, by A. W. B., William E. Rentfro, by A. W. B., Attorneys for Defendants.

Abraham W. Brussell, David M. Cohen, William E. Rentfro.

[fol. 123]

ATTACHMENT TO MOTION

State of Illinois,
County of Cook, ss.:

Affidavit.

Abraham W. Brussell, being duly sworn, makes his oath and deposes and says that he is one of the attorneys of record of all of the defendants in the said cause and that he is the attorney entrusted with the duty of conducting the proceedings in said cause; that as said attorney he caused to be prepared and filed certain motions on behalf of the defendants herein, mainly a motion to stay proceedings pending arbitration, motion to strike the complaint, motion to dismiss the complaint and etc. and caused briefs to be filed on behalf of the defendants herein in support of the said motion.

Affiant states that on Tuesday, March 15, 1960, he received herein copy of an order entered on March 12, 1960, signed by Judge Luther M. Swygert, the presiding Judge in this cause; that said order of March 12, 1960 overruled each and all of the motions of the defendants herein.

Affiant states that the questions of law presented by the said motions as reflected in the briefs filed by both parties herein and in the oral argument had before Judge Luther M. Swygert are questions of law where numerous authorities were cited by both of the parties herein. Affiant further states that some, but not all, of these questions of law

had been previously presented in a matter had before Judge Swygert wherein your Affiant, as attorney for other defendants, took an appeal to the Court of Appeals for the Seventh Circuit in a cause entitled *American Smelting and Refining Company* v. *United Steelworkers of America, AFL-CIO, et al.*, Cause No. 12651; that in said cause the Court of Appeals ruled that although an appeal would lie from an order overruling a motion to stay in the nature [fol. 124] of an appeal from an order denying a temporary injunction that reflect in the particular cause before it, the questions were moot because the matters involved in the motion to stay pr[illegible]dings pending arbitration had been decided by an arbitrator pending the hearing of the appeal and that such ruling made the litigation moot. In that case, the Court of Appeals therefor found it unnecessary to pass upon other questions of law which are either substantially similar and in some respects, identical to many of the questions of law presented by the motions filed by the defendants herein, overruled by Judge Swygert in his order of March 12, 1960.

Affiant states that Judge Luther M. Swygert is outside the boundaries of the United States and that he has been advised that Judge Swygert will not return to this country or take up the call or resume his duties as District Judge until approximately five (5) weeks have elapsed after March 12, 1960.

Affiant further states that Judge Swygert had left the country before affiant was advised of the ruling of Judge Swygert as reflected in his order of March 12, 1960.

Affiant states that as a matter of his professional obligation to his clients, he is of the opinion that for the protection of their rights in this cause and for the purpose of the ultimate termination of the litigation that he has advised them, in substance, to the effect that they should bring before the Court of Appeals for the Seventh Circuit for determination by that Court the questions of law presented by the several motions filed herein; that a difficult question of procedure as to the taking of an appeal that would not be fruitless in the sense that the Court of Appeals would rule that such an appeal was moot exists

by virtue of the fact that Judge Swygert is out of the country. If, under the provisions of Title 28, U. S. C. A., Section 1292(b) a procedure is available that, in substance, [fol. 125] would permit an appeal from the order of Judge Swygert insofar as it overruled the motion to strike and motion to dismiss the action, such procedure would first require, as a condition preceding a recital in the order overruling such motions that would satisfy the requirements of Title 28, Section 1292(b), and further, that the Court of Appeals, in its discretion, would grant such an appeal provided application therefor were made to it within ten (10) days from the date of the order overruling the motion and containing the findings required by Section 1292(b).

Affiant states that the record in the case at bar shows that the order involves controlling questions of law as to all three counts, or in the alternative, one or more of such counts as to which there is substantial ground for difference of opinion. Affiant further states that if this proceeding will go to trial there will be lengthy, expensive litigation with the ultimate termination extended long into the future.

Affiant respectfully suggests that in order to do substantial justice in this cause, and especially to the defendants herein, that the District Court should grant relief in amending the order of March 12, 1960, to the end that full compliance be had with the provisions of Title 28, Section 1292(b) United States Code Annotated, and to the end that defendants be permitted an opportunity to have an appeal under said 1292(b) which would not be subject to the possible defects of an appeal under 1292(a).

Further affiant sayeth not.

Abraham W. Brussell.

Subscribed and sworn to before me, a notary public, this ..... day of March, 1960.

.....

Notary Public.

[fol. 126]

IN THE UNITED STATES DISTRICT COURT

AFFIDAVIT—May 24, 1960

State of Indiana,
County of Lake, ss.:

Robert D. Clark, being first duly sworn, deposes and says that he is in charge of Industrial Relations at the East Chicago Refinery of Sinclair Refining Company, hereinafter referred to as the "Company";

That under the grievance routine in effect at that plant, grievances for purposes of clerical and identification purposes are given numbers;

That on March 4, 1959, grievances 11-X and 12-X were filed with the Company on behalf of employees Owen R. Boyle, Joseph S. Kislowski, and Anthony A. Martino, true and correct copies of which are annexed hereto;

Affiant further says that on March 4, 1959, grievances 13-X and 14-X were filed on behalf of employees Ancil P. Schilling, Sherman E. Moore, Samuel Atkinson, Zolton Cziperle, John Reitz, Joe Bundek, Charles Bainbridge, Mike Payer and Thomas F. Hicks; that on March 25, 1959, grievance 24-X was filed on behalf of employees Dean Bainbridge, John J. Podraza and Robert Dermody and on April 22, 1959, grievances 31-X and 32-X were filed on behalf of employees A. Juhasz and George Badis. True and correct copies of all of said grievances are attached hereto.

Affiant says that in responding to grievances 11-X and 12-X, the Company asserted that the employees involved reported for work late on the several days in question and therefore were docked; that in responding to griev-
[fol. 127] ance 13-X the Company responded in substance that employees Schilling and Moore performed no work for their job classification on February 13 and 16, nor were they engaged in proper processing of grievances for which payment of time lost during regular working hours may be made under the contract; that in responding to grievances

14-X, 24-X, 31-X and 32-X, the Company responded in substance that complainants therein were compensated for hours worked in performing their regular job duties, however, for those hours when they were not performing their regular jobs and were not otherwise in proper processing of grievances for which payment may be made under Article XXVI under the contract, they were not entitled to any compensation;

Affiant says that the parties have been unable to agree on the disposition or settlement of the asserted grievances and that in July and August 1959 the Union notified the Company of its desire to place the said matters in arbitration. Both the Union and Company named arbitrators. The arbitrators were unable to agree on a disposition of the matters. Thereupon the Union substituted Mr. Abraham Brussell, its attorney of record in within case, as its arbitrator and the Company substituted Mr. George Christensen, its attorney of record in within case, as its arbitrator; that a third or impartial arbitrator has not been selected as yet in any of the aforesaid matters; that amongst other matters it is the Company's position that by resorting to and participating in economic action (the February 13-14, 1959 walkout described in the complaint herein) the various grievants waived any believed right to arbitration and the Company, amongst other things, will contend on arbitration, if arbitration occurs, that the arbitrator is without jurisdiction.

Affiant states that he is aware of all grievances filed against the Company at East Chicago and that those mem-
[fol. 128] tioned herein are the only ones in any way connected with the February 13, 14, 1959 walkout.

Further Affiant Sayeth Not.

Robert W. Clark.

Subscribed and sworn to before me this 24th day of May, 1960.

F. J. Galvin, Notary Public, Lake County, Indiana.

(Seal)

[fol. 129]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union AFL-CIO

Complaint or Grievance Report.

Date March 4, 1959

Grievance No. 11-X

Subject Loss of Time

Local No. 7-210

Date Complaint Occurred 2-4-59

Company Sinclair

Location East Chicago

Complainant's Name Owen Boyle

Address .....

Phone No. .....

Job .....

Dept. Rigger

Service in Job 10 In Dept. 11 In Co. 12

Foreman C. Barrix

Supt. C. Blaine

Nature of Complaint=

State who, what, when, where and why

On February 4, 1959 I was docked 15 minutes pay although I had punched in at 7:44 a.m. which is prior to starting time which is 7:45 a.m.

I am therefore requesting that I be reimbursed for these 15 minutes.

Signature /s/ Owen R. Boyle

[fol. 130] ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union AFL-CIO

Complaint or Grievance Report.

Date 3-4-59

Grievance No. 12-x

Subject Loss of Time

Local No. 7-210

Date Complaint Occurred 2-3-59

Company Sinclair

Location East Chicago

Complainant's Name Joseph Kislowski & Anthony Martino

Address .....

Phone No. .....

Job .....

Dept. Rigging

Service in Job 9 In Dept. 10 In Co. 12

Foreman Miller

Supt. C. Blaine

Nature of Complaint=

State who, what, when, where and why

On February 3, 1959 we as the above complainants were docked 15 minutes pay although we had punched in prior to the starting time of 7:45 a.m.

We are therefore requesting that we be reimbursed for the 15 minutes lost.

Signatures /s/ Joseph S. Kislowski
/s/ Anthony A. Martino

[fol. 131]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union AFL-CIO

Complaint or Grievance Report.

Date March 4, 1959

Grievance No. 13-X

Subject Loss of Pay

Local No. 7-210

Date Complaint Occurred Feb. 13 and Feb. 16, 1939

Company Sinclair Refining Co.

Location East Chicago

Complainant's Name Ancil Schilling and Sherman Moore

Address 1114 Cleveland—Hammond, Ind.
602 Hirsch St.—Calumet City, Ill.

Phone No. .....

Job Sinclair Employee

Dept. .....

Service in Job ..... In Dept. ..... In Co. .....

Foreman .....

Supt. .....

Nature of Complaint=

State who, what, when, where and why

On February 13, 1959 and again on Feb. 16, 1959, the above mentioned complainants were not paid wages by the Sinclair Refining Company for work performed in connection with their everyday duties. We are asking that we be reimbursed monies due for the above mentioned days.

Signatures /s/ Ancil F. Schelling
/s/ Sherman E. Moore

[fol. 132]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union AFL-CIO

Complaint or Grievance Report.

Date March 4, 1959

Grievance No. 14-X

Subject Loss of time

Local No. 7-210

Date Complaint Occurred February 13, 1959

Company Sinclair Refining Co.

Location East Chicago, Indiana

Complainant's Name Shop Committee

Address .....

Phone No. .....

Job .....

Dept. .....

Service in Job ..... In Dept. ..... In Co. .....

Foreman .....

Supt. .....

Nature of Complaint=

State who, what, when, where and why

We, the undersigned, request pay for time withheld by Company for work performed in due course of our duties as Shop Committeemen while processing grievances and performing our regular work duties on February 13, 1959, and February 16, 1959.

Signatures /s/ Samuel Atkinson
/s/ Zolton Cziperle
/s/ John Reitz
/s/ Joe Bundek
/s/ Charles Bainbridge
/s/ Mike Fayer
/s/ Thomas F. Hicks

[fol. 133]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union—AFL-CIO-CLC

Complaint or Grievance Report.

Date March 25, 1959

Grievance No. 24-X

Subject Loss of pay

Local No. 7-210

Date Complaint Occurred .....

Company Sinclair

Location East Chicago, Ind.

Complainant's Name Dean Bainbridge, John J. Podraza, Robert Dermody

Address .....

Phone No. .....

Job .....

Dept. .....

Service in Job ..... In Dept. ..... In Co. .....

Foreman .....

Supt. .....

Nature of Complaint=

State who, what, when, where and why

We, the undersigned, were docked fourteen (14) hours pay, eight (8) hours on February 13, 1959, and six (6) hours February 16, 1959.

We request to be reimbursed for this loss of pay.

Signatures /s/ Dean Bainbridge
/s/ John J. Podraza
/s/ Robert Dermody

[fol. 134]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union—AFL-CIO-CLC

Complaint or Grievance Report

Date April 22, 1959

Grievance No. 31-X

Subject Loss of Pay

Local No. 7-210

Date Complaint Occurred Feb. 13 and Feb. 16, 1959

Company Sinclair Refining Company

Location East Chicago, Indiana

Complainant's Name A. Juhasz

Address .....

Phone No. .....

Job Sinclair Employee

Dept. .....

Service in Job ..... In Dept. ..... In Co. .....

Foreman .....

Supt. .....

Nature of Complaint=

State who, what, when, where and why

On February 13, 1959 and again on February 16, 1959, the above mentioned Complainant was not paid wages by the Sinclair Refining Company for work performed in connection with his everyday duties.

I am asking that I be reimbursed monies due for the above mentioned days.

Signature /s/ A. Juhasz

[fol. 135]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union—AFL-CIO-CLC

Complaint or Grievance Report

Date April 22, 1959

Grievance No. 32-X

Subject Loss of Pay

Local No. 7-210

Date Complaint Occurred February 13, 1959

Company Sinclair Refining Co.

Location East Chicago, Indiana

Complainant's Name George Badis

Address .....

Phone No. .....

Job Sinclair Employee

Dept. .....

Service in Job ..... In Dept. ..... In Co. .....

Foreman .....

Supt. .....

Nature of Complaint=

State who, what, when, where and why

On February 13, 1959, the above mentioned Complainant was not paid wages by the Sinclair Refining Company for work performed in connection with his everyday duties.

I am asking that I be reimbursed monies due for the above mentioned day.

Signature /s/ George Badis

[fol. 136]

IN THE UNITED STATES DISTRICT COURT

ORDER—June 23, 1960

Upon rehearing, it is hereby ordered, decreed, and adjudged that the order of March 12, 1960, be, and hereby is, vacated.

It is further ordered, decreed and adjudged that the Motion to Dismiss Count I be, and hereby is, denied.

It is further ordered, decreed and adjudged that the Motions to Dismiss Counts II and III be, and hereby are, granted.

It is further ordered, decreed and adjudged that the Motion to Stay be, and hereby is, denied.

Enter:

Luther M. Swygert, United States District Judge.

Hammond, Indiana, June 23, 1960.

[fol. 138]

IN THE UNITED STATES DISTRICT COURT

MEMORANDUM OF DECISION—June 23, 1960

The matter is before the court principally on a motion to vacate its order of March 12, 1960, and to grant a rehearing on several motions which were the subject of the March 12th order.

A rehearing has been afforded the defendants. After oral argument and submission of briefs on the motion for rehearing, I have come to the conclusion that the March 12th order should be vacated and a new order entered which modifies substantially the older order. A memorandum setting forth the reasons for the new order seems appropriate.

Dismissal of Count I.

As I understand defendants' contention, it is that if there are possibly protected or prohibited union activities under §§ 7 and 8 of the Labor Management Relations Act involved in the factual situation whereby the "no-strike" agreement was allegedly breached, the court cannot entertain jurisdiction under § 301 of the Act. They cite *San Diego Bldg. Trades Council* v. *Garmon,* 359 U. S. 236, and *Plumbers* v. *County of Door,* 359 U. S. 354.

The *Garmon* and *Door* cases dealt with pre-emption of state-court jurisdiction where there were present or arguably present protected or prohibited union activities which came within the jurisdiction of National Labor Relations Board under §§ 7, 8 and 10 of the Act. Neither case presented the problem of a conflict between the jurisdiction of the Board and the courts because of a possible overlap of activities protected or prohibited by §§ 7 and 8 and at the same time the basis for a violation of a labor contract enforceable under § 301.

[fol. 139] The alleged violation of a collective bargaining contract is the basis of Count I. There is nothing in the record at this point to indicate that the events claimed to constitute a violation of the contract also involved either protected or prohibited activity. But even the presence of such activities would not give preferential jurisdiction to the Board and oust that of the courts. The responsibility of enforcing labor contracts lies in the courts; otherwise there would have been no need for enacting § 301.

Dismissal of Count II.

The Court's attention has been called to two cases not considered at the time the motion to dismiss was originally ruled upon, *Lewis* v. *Benedict Coal Corp.,* 361 U. S. 459, and *Wilson & Co.* v. *United Packinghouse Wkrs. of America,* 181 F. Supp. 809 (N. D. Iowa, 1960).

Judge Graven in the *Wilson* case, after an exhaustive discussion of the identical problem, concluded that the officers of the labor union are not individually liable for the inducement of a breach of a collective bargaining con-

tract where the union is being sued under § 301 of the Taft-Hartley Act for the breach. In his opinion, Judge Graven cited the *Lewis* case in support of his conclusion. In that case the Supreme Court in the majority opinion stated:

> "Section 301(b) of the Taft-Hartley Act provides that 'any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.' At the least this evidences a congressional intention that the union as an entity, like a corporation, should in the absence of agreement be the sole source of recovery for injury inflicted by it * * *."

[fol. 140] It is clear from the language in the *Lewis* case that a labor union when sued under § 301 must be treated as if it were a corporation. It is also made clear that union members or officers cannot be held individually liable for acts of the union, as, similarly, stockholders and officers of a corporation are not liable for corporate acts.

It is generally the law that officers and employees of a corporation cannot be held liable for inducing a breach of its contract. *Wilson & Co.* v. *United Packinghouse Wkrs. of America, supra;* 30 *Am. Jur., Interference,* § 37; *Hicks* v. *Haight,* 171 Misc. 151, 11 N.Y.S. 2d 912 (1939); 26 *A.L.R.* 2d 1270. By analogy, and having in mind the language in the *Lewis* case, a union member or officer cannot be held liable for inducing the breach of a union contract.

The fact that Count II is based on diversity jurisdiction is not determinative of the motion. Section 301 is more than a procedural statute; it is also substantive. The section is the statutory source of federal law governing remedies for violations of collective bargaining contracts. *Textile Wkrs. etc.* v. *Lincoln Mills of Alabama,* 353 U. S. 448.

Drawing, then, from general corporate law, and relating it to suits for breaches of collective bargaining contracts under § 301 as that section has been construed by the

Supreme Court, the conclusion is inevitable that suits of the nature alleged in Count II are no longer cognizable in state or federal courts.

Dismissal of Count III.

Plaintiff urges that since *Lincoln Mills* allowed specific enforcement of the agreement to arbitrate the case now compels specific enforcement of the no-strike agreement received in exchange for the promise to arbitrate. It contends that the Norris-LaGuardia Act should not preclude [fol. 141] injunctive relief in the case at bar because the conditions which prompted passage of that Act no longer obtain.

That the suit at bar involves a labor dispute within the meaning of § 13(c) of the Norris-LaGuardia Act is beyond dispute. That it also involves an alleged breach of a no-strike clause of a collective bargaining agreement does not alter the fact a labor dispute exists under the definition of § 13(c) of the Act. *A. H. Bull Steamship Co.* v. *National-Marine Eng. B. Assn.*, 250 F. 2d 332.

Since the original ruling on the motion to dismiss Count III, the Supreme Court decided *The Order of Railroad Telegraphers, et al.* v. *Chicago & N. Western R. Co.*, on April 18, 1960. In that case the Supreme Court left no doubt that § 4 of the Norris-LaGuardia Act withdraws jurisdiction from the federal courts to issue injunctions to prohibit the refusal "to perform work or remain in any relation of employment" in cases involving any labor dispute.

Upon reconsideration and in light of the opinion in *Railroad Telegraphers,* I have come to the conclusion that *Lincoln Mills* does not remove the sweep of the Norris-LaGuardia Act so as to permit the specific enforcement of a no-strike clause in a labor contract.

Motion to Stay.

Defendants seek a stay of the action on the ground that certain grievances filed as the result of the strike or work stoppage alleged in the complaint are subject to arbitra-

tion in accordance with the procedure outlined in the contract. In my opinion the resolution of these grievances by arbitration would not decide whether there was a strike or work stoppage and whether there occurred thereby a breach of the contract by the union which promised not to permit work stoppages or strikes over matters which are subject to arbitration. *Lincoln Mills* permits a labor union [fol. 142] to sue under § 301 for specific performance of a promise by the employer to arbitrate grievances defined in the collective bargaining agreement. For similar reasons, the employer has the right under § 301 to sue the union for a violation of the no-strike clause.

In *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, decided by the Supreme Court on June 20, 1960, the majority opinion said in part:

> "The Congress, however, has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate."

Paraphrasing the above language, Congress by § 301 assigned to the courts the duty of determining whether the union has breached its promise not to strike over arbitrable grievances.

The arbitration of grievances filed by union members over disciplinary action taken by the company as a result of the alleged strike involves issues quite distinct from the issue whether the union violated its contract. For that reason the motion to stay must be denied.

Luther M. Swygert, United States District Judge.

Hammond, Indiana, June 23, 1960.

[fol. 145]

IN THE UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT

Now comes plaintiff, Sinclair Refining Company, by its attorneys, Winston, Strawn, Smith & Patterson and Galvin, Galvin & Leeney, and moves this Honorable Court to find that there is no just reason for delaying the entry of a final judgment upon Counts II and III of the Complaint, and to enter an order directing the entry of a final judgment dismissing Counts II and III of the Complaint and dismissing the individual defendants from this action.

And as cause for said motion, plaintiff respectfully shows:

1. Under the terms of Rule 54(b) of the Federal Rules of Civil Procedure an order dismissing less than all of the claims in an action does not terminate the action as to any of the claims unless the Court specifically directs the entry of a final judgment upon such claims and makes an express finding that there is no just reason for delay. In the absence of such finding and direction, the aggrieved party has no right to appeal the dismissal of claims until all of the claims have been disposed of by the court. (This rule, however, does not restrict statutory appeals.)

2. This Court's order of June 23, 1960 has the practical effect of terminating the action as to the individual defendants if plaintiff desires to appeal the dismissal of Counts II and III. If plaintiff is permitted to take such an appeal only after all of the claims in the action have been resolved, it could well result in plaintiff having to try this lawsuit [fol. 146] twice: first, before appeal against the union defendants, and second, after the appeal if plaintiff is successful, against the individual defendants.

It is therefore apparent that "there is no just reason for delay" (Rule 54(b)), and that it is to the interest of all parties that plaintiff be permitted promptly to perfect an appeal as to the dismissal of Counts II and III.

Respectfully submitted,

Winston, Strawn, Smith & Patterson; Galvin, Galvin & Leeney.

Received a copy of the above and foregoing Motion this 1st day of July, 1960.

Abraham W. Brussell, for all of the Defendants.

IN THE UNITED STATES DISTRICT COURT

NOTICE OF MOTION TO AMEND ORDER OF JUNE 23, 1960

To: George B. Christensen, Winston, Strawn, Smith and Patterson, 38 South Dearborn Street, Chicago Illinois; Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana.

Please Take Notice that on Tuesday, July 5, 1960 at the hour of 9:30 A.M. or soon thereafter as counsel may be heard, we shall appear before the Honorable Luther M. Swygert, Judge of the District Court for the Northern [fol. 147] District of Indiana, or any other judge sitting in his place and stead, and at that time we shall present the motion of the defendants herein, copy of which is hereby attached and served upon you, asking the Court to enter a motion to amend the order of June 23, 1960 entered by Judge Swygert therein by changing the date for the production of books and records from July 6, 1960 at 10:00 A.M. to the date of July 28, 1960 at 10:00 A.M.

In support of said motion, defendants present the affidavit of Abraham W. Brussell, copy of which is attached hereto and served upon you.

Abraham W. Brussell, David Cohen, William E. Rentfro, Attorneys for Defendants.

Abraham W. Brussell, 318 West Randolph Street, Chicago 6, Illinois, RAndolph 6-2922, David M. Cohen, 2102 Broadway, East Chicago, Indiana, William E. Rentfro, P. O. Box 2812, Denver, Colorado.

Received this Notice this 1st day of July, 1960.

Galvin, Galvin & Leeney; Winston, Strawn, Smith & Patterson.

[fol. 148]

IN THE UNITED STATES DISTRICT COURT

JUDGMENT—July 5, 1960

This cause came on for hearing on defendants' motions to dismiss Counts I, II and III of the Complaint, and the Court, after hearing all parties, having entered an order on June 23, 1960 dismissing Counts II and III, and the Court having determined that there is no just reason for delay and having directed the entry of a final judgment on said Counts II and III,

It Is Hereby Ordered, Adjudged and Decreed, that the individual defendants be and hereby are dismissed from this action and that Counts II and III be and hereby are finally dismissed.

Enter:

Luther M. Swygert, United States District Judge.

Hammond, Indiana, July 5, 1960.

IN THE UNITED STATES DISTRICT COURT

ORDER GRANTING PLAINTIFF LEAVE TO FILE INTERLOCUTORY APPEAL—July 5, 1960

This cause coming on to be heard on the motion of plaintiff for permission to file an interlocutory appeal from the Order of this Court entered June 23, 1960, dismissing Counts II and III of the Complaint; and

The Court being of the opinion that the Orders dismissing Counts II and III involve controlling questions of law as to which there is substantial ground for differences of opinion and that an immediate appeal from these Orders will materially advance the ultimate termination of the [fol. 149] litigation, concludes that an appeal should be permitted to be taken from the Orders at this time, pursuant to Section 1292(b), 28 U. S. C.;

It Is Therefore, Ordered that the plaintiff be granted leave to file an interlocutory appeal.

Enter:

Luther M. Swygert, United States District Judge.

Hammond, Indiana, July 5, 1960.

IN THE UNITED STATES DISTRICT COURT

MOTION TO VACATE ORDERS OF JULY 5, 1960 FOR THE PURPOSE OF CONSIDERATION OF MOTIONS FOR LEAVE TO FILE AN AMENDED COUNT II AND FOR RECONSIDERATION OF THE COURT'S RULING DISMISSING COUNT III—Filed July 21, 1960

Now comes the plaintiff, by its attorneys, and moves that the orders entered herein July 5, 1960 with respect to appeals be vacated for the purpose of allowing plaintiff to file a motion for leave to file an Amended Count II and a motion to reconsider the Court's ruling dismissing Count III.

Timothy P. Galvin, George B. Christensen, Fred H. Daugherty, Attorneys for Plaintiff.

Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana; Winston, Strawn, Smith & Patterson, 38 South Dearborn Street, Chicago 3, Illinois, Of Counsel.

[fol. 150]

IN THE UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO FILE AMENDED COUNT II AND MOTION FOR RECONSIDERATION OF THE COURT'S RULING DISMISSING COUNT III—Filed July 21, 1960

Now comes the plaintiff, by its attorneys, and moves that it be given leave to file an Amended Count II to its Complaint herein, copy whereof is tendered herewith.

Plaintiff further moves that the Court reconsider its ruling of June 23, 1960 dismissing Count III of the Complaint. As cause for such reconsideration plaintiff shows that on June 20, 1960 the Supreme Court decided the cases of *United Steelworkers* v. *American Manufacturing Co., United Steelworkers* v. *Warrior & Gulf Navigation Co., United Steelworkers* v. *Enterprise Wheel & Car Corp.,* and *Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas Railroad Co.,* all concerned with enforcement of the national labor policy that grievances and minor disputes should be settled by arbitration.

Plaintiff's counsel had no opportunity to argue the sweeping effect of the June 20 decisions and their relationship to the case at bar. Those decisions go so far, and cut such a wide path, that their effect may not be fully appreciated on first reading.

Plaintiff respectfully shows that in 1957, in *Brotherhood of Railway Trainmen* v. *Chicago River & Indiana Railroad Company,* 353 U. S. 30, it was held that the Norris-LaGuardia Act did not prohibit injunctions by Federal courts prohibiting strikes over what are termed *"minor disputes"* under the Railway Labor Act that fell within the jurisdiction of the Railroad Adjustment Board. The Court said in that case, *inter alia*:

> "We hold that the Norris-LaGuardia Act cannot be [fol. 151] read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable.

"In adopting the Railway Labor Act, Congress endeavored to bring about stable relationships between labor and management in this most important national industry. It found from the experience between 1926 and 1934 that the failure of voluntary machinery to resolve a large number of minor disputes called for a strengthening of the Act to provide an effective agency, in which both sides participated, for the final adjustment of such controversies * * *.

"The Norris-LaGuardia Act, on the other hand, was designed primarily to protect working men in the exercise of organized economic power, which is vital to collective bargaining. * * * Such controversies, therefore, are not the same as those in which the injunction strips labor of its primary weapon *without substituting any reasonable alternative.*" (Emphasis supplied.)

On April 18, 1960, in *Railroad Telegraphers,* the Supreme Court held that the issue was a proposed contract change and, therefore, was a bargainable issue or so-called *"major dispute"* within the meaning of the Railway Labor Act and, therefore, because of Norris-LaGuardia, was not subject to injunction.

On June 20, in *Locomotive Engineers* v. *Missouri-Kansas-Texas Railroad Co.,* the Court again upheld the power of a Federal court, despite the Norris-LaGuardia Act, to issue injunctions in *"minor disputes,"* i.e., those within the jurisdiction of the Adjustment Board. *"Minor disputes"* within the parlance of the Railway Labor Act are the equivalent of *"grievances"* that are submissible to arbitration under the parlance of the Labor-Management Relations Act. Thus the Supreme Court's June 20 holding demonstrates, we submit conclusively, that how-
[fol. 152] ever sweeping the language of *Railroad Telegraphers* may have been thought to be, the Court did not intend thereby to modify in the slightest the teaching of *Chicago River & Indiana* that strikes over "minor disputes" may be enjoined. *Railroad Telegraphers* therefore has no relevance to the case at bar.

The other June 20, 1960 decisions of the Supreme Court show a broad policy to require submission of "grievances,"

i.e., "minor disputes," under the Labor-Management Relations Act to arbitration. In the *Warrior & Gulf Navigation* case the Court held:

"We held in *Textile Workers* v. *Lincoln Mills,* 353 U. S. 448, that a grievance arbitration provision in a collective agreement could be enforced by reason of § 301(a) of the Labor-Management Relations Act and that *the policy to be applied in enforcing this type of arbitration was that reflected in our national labor laws. Id.,* at 456-457. *The present federal policy is to promote industrial stabilization through the collective bargaining agreement. Id.,* at 453-454. *A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.*"

"• • • *arbitration is the substitute for industrial strife.* Since arbitration of labor disputes has quite different functions from arbitration under an ordinary commercial agreement, the hostility evinced by courts toward arbitration of commercial agreements has no place here. For arbitration of labor disputes under collective bargaining agreements is part and parcel of the collective bargaining process itself."

"• • • But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes [fol. 153] through the grievance machinery is actually a vehicle by which meaning and content is given to the collective bargaining agreement.

"Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement. The grievance procedure is, in other words, a part of the continuous collective bargaining

process. *It rather than a strike, is the terminal point of a disagreement.*"

"* * * to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under § 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or agreed to give the arbitrator power to make the award he made. * * *"

"The judiciary sits in these cases to bring into operation an arbitral process which substitutes a regime of peaceful settlement for the older regime of industrial conflict. Whether contracting-out in the present case violated the agreement is the question. It is a question for the arbiter, not for the courts." (Emphasis added.)

The *American Manufacturing Co.* decision of June 20 places the desirability of protecting and enforcing arbitration under the Labor-Management Relations Act on as important a basis as it is in Railway Labor, for the Court says in that decision:

"Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 U. S. C. § 173(d) states, 'Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective [fol. 154] bargaining agreement. * * *' *That policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play.*"

The philosophy of the June 20, 1960 decisions clearly shows that the Supreme Court is determined to enforce the policy it laid down in *Lincoln Mills.* That policy *necessarily means under the Labor Management Relations Act, as much as under the Railway Labor Act, that where a "minor dispute" or "grievance" is subject to arbitration,* whether by a privately selected arbitrator under Labor-

Management or an Adjustment Board under Railway Labor, that a strike over it may be enjoined despite Norris-LaGuardia.

The entire policy that the Supreme Court so forcefully expressed in *Lincoln Mills* and *Chicago River & Indiana* and in its June 20 decisions would be frustrated if the courts were to say that unions will be permitted in all the major industries of the country to resort to strike rather than to arbitrate over grievances. That is the issue raised by Count III of the case at bar.

In the *Warrior & Gulf Navigation* case Justice Douglas used the following language:

> "The Congress, however, has by Sec. 301 of the Labor-Management Relations Act, assigned the courts the duty of determining *whether the reluctant party has breached his promise to arbitrate.*" (Emphasis supplied.)

Plainly the requirement to arbitrate is to be enforced against *both parties*—not merely the employer. As shown in plaintiff's "Memorandum in Support of Count III," this can be done effectively only through the injunctive process.

[fol. 155] A decision to strike or to dismiss Count III is at variance with the June 20 decisions.

Timothy P. Galvin, George B. Christensen, Fred H. Daugherty, Attorneys for Plaintiff.

Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana; Winston, Strawn, Smith & Patterson, 38 South Dearborn Street, Chicago 3, Illinois, Of Counsel.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION TO VACATE ORDERS OF JULY 5, 1960, AND DENYING MOTION TO FILE AMENDED COUNT II, ETC. —July 21, 1960

Plaintiff files motion to vacate orders of July 5, 1960, for the purpose of consideration of motions for leave to file an amended count II and for reconsideration of the court's ruling dismissing count III.

Plaintiff files motion for leave to file amended count II and Motion for Reconsideration of the court's ruling dismissing Count III.

Parties present in court by counsel, for hearing on motions filed by plaintiff this date. (H. I.) Arguments heard. Order per form (SE). Swygert: J. Motion to vacate orders granted; motion to file amended complaint and for reconsideration of court's ruling dismissing count III, denied.

[fol. 156]

IN THE UNITED STATES DISTRICT COURT

AMENDED COUNT II TO COMPLAINT

Now comes the plaintiff, leave of Court being first duly had and obtained, and files this, its Amended Count II to the Complaint herein:

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Maine. It maintains its principal office in the State of New York. For purposes of federal diversity jurisdiction, upon which this Court depends, it is a citizen of Maine and of New York and of no other states. Plaintiff is also an employer in an industry affecting commerce within the meaning of the National Labor Relations Act, as amended.

2. The defendants Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert V. Dermody, Frank Dicken, Thomas F. Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach,

Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike Payer, John J. Podraza, John Reitz, and A. F. Schilling (hereinafter sometimes referred to as "individual defendants") are, and at all times material hereto were, employees of the plaintiff at a refinery which it operates at East Chicago, Indiana. Each said individual defendant is a citizen of Illinois or Indiana and none are citizens of Maine or New York. Each of the defendants in this paragraph named is, and at all times material hereto was, a committeeman of the Local Union and an agent of the International charged with representing and protecting their interests and those of their members in various sections or departments of plaintiff's refinery at East Chicago, Indiana.

[fol. 157] 3. The amount in controversy herein exceeds the sum or value of $10,000 exclusive of interest and costs.

4. Plaintiff adopts as and for the allegations of this paragraph 4 of (sic) the allegations of paragraph 2 of Count I.

5. Plaintiff adopts as and for the allegations of this paragraph 5 the allegations of paragraph 3 of Count I.

6. Plaintiff adopts as and for the allegations of this paragraph 6 the allegations of paragraph 4 of Count I and adds to it the following: The said Exhibit A constitutes a contract not only between The International and Local Union and plaintiff but was (during its term) a part of the individual contracts of employment between plaintiff and the sundry approximate 1700 individual employees within the said bargaining unit.

7. Plaintiff adopts as and for the allegations of this paragraph 7 the allegations of paragraph 5 of Count I.

8. Plaintiff adopts as and for the allegations of this paragraph 8 the allegations of paragraph 6 of Count I.

9. Plaintiff shows that February 13 and 14, 1959 were regular working days for its refinery at East Chicago, Indiana, but on said days the individual defendants and each of them, contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and con-

spiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract by the said labor organizations and of approximately 999 individual contracts of employment of which the said contract formed a part, and to interfere with performance thereof by the said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated in a strike or work stoppage by approximately 999 of the approximate 1700 employees within the bargaining unit represented by the Local Union at said East Chicago refinery [fol. 158] over asserted pay claims on behalf of three members of the said bargaining unit aggregating $2.19, which asserted claims could, and, if valid, should have been the subject of a grievance under Article XXVI of the said contract.

10. Plaintiff shows that the work stoppage of February 13-14, 1959, greatly disrupted the normal operations of its refinery and that its damages by way of out-of-pocket expenses directly caused by the aforesaid illegal stoppage, induced, fomented and assisted by the individual defendants as hereinabove alleged, were, to-wit, $12,500.

Wherefore, plaintiff brings this suit and prays judgment jointly and severally against the individual defendants for $12,500 and costs.

Timothy P. Galvin, George B. Christensen, Fred H. Daugherty, Attorneys for Plaintiff.

Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana; Winston, Strawn, Smith & Patterson, 38 South Dearborn Street, Chicago 3, Illinois, Of Counsel.

[fol. 159]

IN THE UNITED STATES DISTRICT COURT

ORDER—July 21, 1960

The plaintiff's motion to vacate orders of July 5, 1960 for the purpose of consideration of motions for leave to file an amended Count II and for reconsideration of the Court's ruling dismissing Count III, is hereby granted.

The plaintiff's motion for leave to file amended Count II, and for reconsideration of the court's ruling dismissing count III, is hereby denied.

The order of June 23, 1960 is again amended in that the date originally specified therein as July 6, 1960, is now specified as August 23, 1960.

Enter:

Luther M. Swygert, Judge.

Hammond, Indiana, July 21, 1960.

[fol. 160]

IN THE UNITED STATES DISTRICT COURT

ORDER—July 28, 1960

The plaintiff's motion to vacate orders of July 5, 1960 for the purpose of consideration of motions for leave to file an amended Count II and for reconsideration of the Court's ruling dismissing Count III, is hereby granted.

The plaintiff's motion for leave to file amended Count II, and for reconsideration of the court's ruling dismissing Count III, is hereby denied.

The orders of June 23, 1960 are hereby vacated and reinstated effective July 21, 1960 except that the date originally specified therein as July 6, 1960 for the production of documents is now specified as August 23, 1960. The orders of July 5, 1960 are reinstated effective July 21, 1960 and made applicable to this order.

Enter:

Luther M. Swygert, Judge.

Hammond, Indiana, July 28, 1960.

[fol. 162]

IN THE UNITED STATES DISTRICT COURT

MOTION RE INTERLOCUTORY APPEAL—Filed July 28, 1960

To: George B. Christensen, Winston, Strawn, Smith and Patterson, 38 South Dearborn Street, Chicago, Illinois, Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana.

Now comes Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, and Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, each on their own behalf and for each other, by their attorneys, and move the Court as follows:

1. The order of the Court of June 23, 1960, which was vacated and reinstated effective July 21, 1960, overruling defendants Motion to Dismiss or Strike Count I of the Complaint in the above-entitled action involves controlling questions of law as to which there is substantial ground for differences of opinion and that an immediate appeal will advance the ultimate termination of litigation and that therefore leave be granted the defendants, pursuant to 28 USC S. 1292(b), to file an interlocutory appeal from the aforesaid order.

2. The Court determine and rule that there is no just reason for delay and therefore direct the entry of a final order denying defendants aforesaid Motion to Dismiss or [fol. 163] Strike Count I of the Complaint, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Samuel M. Atkinson, et al., By: Abraham W. Brussell, David Cohen, William E. Rentfro.

Dated at Chicago, Illinois, this 28th day of July, 1960.

IN THE UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT, ETC.—Filed July 28, 1960

To: George B. Christensen, Winston, Strawn, Smith and Patterson, 38 South Dearborn Street, Chicago, Illinois, Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana.

Now Come Samuel Atkinson, et al., each on his own behalf and for the other defendants, by their attorneys, and moves the Court as follows:

The Court, having entered an order on June 23, 1960 which was vacated and reinstated effective July 21, 1960, denying defendants' Motion to Stay this action, the Court now determine and rule that there is no just reason for delay and therefore direct the entry of a final judgment or order denying the aforesaid Motion to Stay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Samuel M. Atkinson, et al., By Abraham W. Brussell, David Cohen, William E. Rentfro.

Dated at Chicago, Illinois this 28th day of July, 1960.

[fol. 164]

IN THE UNITED STATES DISTRICT COURT

ORDER RE JUDGMENT—July 28, 1960

Parties appear by counsel. Motion for entry of final judgment pursuant to Rule 54(b) relating to defendants' motion to stay pending arbitration, heard. Motion granted.

Court now determines and rules that there is no just reason for delay and therefore directs the entry of a final order denying the motion to stay. Judgment entered accordingly.

Defendants' motion for an order pursuant to 28 U. S. C. § 1292(b) for permission to file an interlocutory appeal from the court's denial of defendants' motion to dismiss

and to strike Count I of the complaint, heard. Motion denied.

It is stipulated by counsel that pending the appeal of the orders granting defendants' motion to dismiss Counts II and III, no assignment for trial will be made of Count I. Stipulation approved.

Order to amend order of July 21, 1960 entered by agreement.

[fol. 165]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION.

No. 2566

[Title omitted]

NOTICE OF APPEAL—Filed August 6, 1960

Notice is hereby given that Plaintiff, Sinclair Refining Company, hereby appeals in the above entitled cause to the United States Court of Appeals for the 7th Circuit from:

1. That portion of the order of the District Court dated July 5, 1960 (later reinstated and made effective July 21, 1960 by order dated July 28, 1960) which finally dismissed Counts II and III of the Complaint and dismissed all individual defendants from the action.

2. That portion of the orders of the District Court dated July 21 and 28, 1960 denying Plaintiff leave to file an amended Count II to the Complaint.

George B. Christensen, Francis J. Galvin, Fred H. Daugherty, Richard W. Austin, Attorneys for Plaintiff, By Fred H. Daugherty, One of the Attorneys for Plaintiff.

August 4, 1960

Winston, Strawn, Smith & Patterson, 38 S. Dearborn Street, Chicago, Illinois; Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana.

[fol. 167]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF INDIANA,
HAMMOND DIVSION.

No. 2566

[Title omitted]

Action for Damages for Breach of Contract and for Inducing Breach and for Injunctive Relief.

NOTICE OF APPEAL—Filed August 19, 1960

Notice is hereby given that Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert V. Dermody, Frank Dicken, Thomas F. [fol. 168] Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach, Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike Payer, John J. Podraza, John Reitz, A. F. Schilling, Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, and Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, defendants above named, and each and all of them, hereby appeal to the United States Court of Appeals for the Seventh Circuit, from the order and decision of District Judge Luther Swygert, of June 23, 1960, reentered and finalized on July 21, 1960, denying defendants' motion to stay action.

Abraham W. Brussell, 318 W. Randolph Street, Chicago 6, Illinois, RAndolph 6-2922, David Cohen, 2102 Broadway, East Chicago, Indiana, EXport 7-7100, William E. Rentfro, P. O. Box 2812, Denver, Colorado, AMherst 6-0811.

[fol. 170]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Before: Hon. John S. Hastings, Chief Judge, Hon. Win G. Knoch, Circuit Judge, Hon. Latham Castle, Circuit Judge.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

No. 13092

SINCLAIR REFINING COMPANY, Petitioner,

vs.

SAMUEL M. ATKINSON, et al., Respondents.

ORDER ALLOWING APPEALS—August 25, 1960

Plaintiff having petitioned for leave to appeal in a case pending in the United States District Court for the Northern District of Indiana, Hammond Division, No. 2566, and the District Court having certified that the order which is at issue, involves a controlling question of law as to which there is substantial ground for a difference of opinion, and an immediate appeal from said order may materially advance the ultimate determination of the litigation; and on consideration of said petition and the objection filed thereto, and the briefs filed,

It Is Ordered, the petition of plaintiffs herein to appeal pursuant to Title 28, U. S. Code sec. 1292(b), be and the same is hereby granted.

[fol. 171] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 172]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 13092, 13136

SINCLAIR REFINING COMPANY, Plaintiff-Appellant,

v.

SAMUEL M. ATKINSON, et al., Defendants-Appellees.

No. 13137

SINCLAIR REFINING COMPANY, Plaintiff-Appellee,

v.

SAMUEL M. ATKINSON, et al., Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Indiana, Hammond Division.

OPINION—April 25, 1961

Before Schnackenberg, Castle and Major, Circuit Judges.

CASTLE, Circuit Judge. Sinclair Refining Company, plaintiff-appellant, hereinafter referred to as plaintiff, commenced this action in the District Court. It seeks damages for alleged breach of a no-strike clause of a collective bargaining agreement; a declaration of rights; and a permanent injunction.

Count I of the complaint invokes jurisdiction under Section 301 of the Labor-Management Relations Act (29 [fol. 173] U.S.C.A. § 185); names Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Local No. 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, as defendants; alleges in substance that

the International and Local constitute the recognized collective bargaining agent for approximately 1700 production and maintenance employees in a bargaining unit confined to plaintiff's East Chicago, Indiana, refinery, and that said Unions by their officers, committeemen and other agents caused a strike or work stoppage by approximately 999 of the employees within the bargaining unit on February 13 and 14, 1959 over asserted pay claims of three members, aggregating $2.19, and which were arbitrable under the grievance procedure of the current collective bargaining agreement, and that the work stoppage was in violation of the no-strike clause of the agreement and caused damages to plaintiff by way of out-of-pocket expenses in the amount of $12,500.00 for which recovery is sought.

Count II is based on diversity. It names as defendants 24 individuals, employees of plaintiff at the East Chicago refinery, who are committeemen of the Local and agents of the International. It incorporates the allegations of Count I concerning the collective agreement and it seeks damages from the individual defendants in the same amount and for the same work stoppage. It alleges that the individual defendants "contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and conspiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract, and to interfere with performance thereof by said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated" in the strike or work stoppage.

Count III is based on diversity with respect to the same 24 individual defendants named in Count II and asserts jurisdiction under Section 301 of the Labor-Management Relations Act (29 U.S.C.A. § 185), as well as diversity, with respect to the Local and International Unions. In addition to the allegations of Counts I and II it alleges eight previous strikes or work stoppages at the East Chicago refinery during the term of the current collective agree- [fol. 174] ment over matters subject to its grievance procedure and provisions for arbitration, damaging plaintiff greatly in excess of $10,000.00. It seeks a declaration of the

validity and enforceability of the no-strike and grievance provisions of the contract and a permanent injunction restraining and enjoining all of the defendants "from aiding, abetting, formenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bargaining unit at plaintiff's East Chicago, Indiana, refinery" covered by the current collective agreement "in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions".

The defendants filed a motion to dismiss and a motion to stay. The District Court denied the motion to stay and denied the motion to dismiss as to Count I (action against Unions for damages) but granted the motion to dismiss and entered judgment dismissing Counts II (action against individual defendants for damages) and III (declaratory and injunctive relief).

The plaintiff appealed the dismissal of Counts II and III.[1] The defendants appealed the denial of the motion to stay.[2] The plaintiff's appeal (Nos. 13092 and 13136) has not been consolidated with defendants' appeal (No. 13137). However, to avoid unnecessary repetition we elect to treat them as consolidated for the purpose of disposition in one opinion.

The main contested issues presented by plaintiff's appeal are:

> (1) Whether 29 U.S.C.A. § 185 precludes suit for recovery of damages from individual union officer-company employees for inducing or participating in a [fol. 175] strike or work stoppage in violation of a no-

[1] Plaintiff states that in order to avoid any question of finality of the District Court's orders both an interlocutory appeal (No. 13092) and a regular appeal (No. 13136) were perfected. Plaintiff's appeals have been consolidated.

[2] Defendants' appeal was perfected pursuant to 28 U.S.C.A. § 1292(a) (1).

strike clause of a collective bargaining agreement covering the unit to which they belong.

(2) Whether 29 U.C.S.A. § 101 precludes injunctive relief to restrain a future breach of a no-strike clause of a collective bargaining agreement.

Those presented by defendants' appeal are:

(1) Whether the collective bargaining agreement here involved required the employer to submit to arbitration any claim he might make for damages caused by breach of the agreement's no-strike clause.

(2) Had the employer submitted the claim to arbitration?

We will first consider the issues raised by defendants' appeal. The defendants contend that since the cause of action against the Local and International is based on an alleged violation of the no-strike clause of the collective agreement, the dispute is first subject to adjustment and determination under the arbitration procedure of the agreement and that no action can be brought until these procedures are exhausted. Defendants further contend that the causes of action against all of the defendants must be stayed until a determination of the issues raised in pending arbitrations is made because such issues are the same as those "which the plaintiff has sought the court to decide under the allegations of its complaint". This latter contention is based in part on the contents of an affidavit filed in support of the motion to stay. The affidavit recites that as a result of the work stoppage which occurred February 13 and 14, 1959 certain grievances are pending, pursuant to the grievance and arbitration procedure of the contract, involving disciplinary action taken against some of the individual defendants for allegedly fomenting, assisting and participating in such strike or work stoppage, and that the disputes which caused the eight previous work stoppages referred to in Count III of plaintiff's complaint have all been disposed of pursuant to the grievance procedure of the contract except the question of the compensation of one worker, which is the subject of a pending grievance. A

counter-affidavit filed by plaintiff discloses that the griev- [fol. 176] ances of the individual defendants were filed subsequent to the work stoppage of February 13 and 14, 1959 and involve either the three pay claims aggregating $2.19 concerning deductions made by the plaintiff from compensation of the employees because of their reporting for work late, which deductions allegedly caused the work stoppage, or relate to the plaintiff's refusal to compensate individual defendants for time spent processing grievances contrary to disciplinary restrictions imposed by plaintiff, because of the work stoppage, on their engaging in such activity. It is further recited that the parties have been unable to agree on a settlement or disposition of the grievances, that both the Union and the plaintiff have named arbitrators but that a third or impartial arbitrator had not as yet been selected.

The collective bargaining agreement here involved is for a term beginning June 15, 1957 and continuing to June 14, 1959 and thereafter unless terminated by either party on sixty-days' written notice. The agreement contains both a no-strike clause and an arbitration clause.

The no-strike clause is as follows:

"Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages:

(1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or

(2) For any other cause, except upon written notice by Union to Employer provided:

(a) That Employer within thirty (30) days from the receipt of such notice will meet with the representatives of the Union and endeavor to reach an agreement on the matter in dispute.

(b) In the event an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified in (a) hereof, Union, upon the expiration of such forty-five (45) day pe-

riod, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice".

[fol. 177] Article XXVI of the agreement sets forth the grievance and arbitration procedure. It defines "grievance" as follows:

> "A grievance is defined to be any difference regarding wages, hours, or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operation."

The Article then sets forth detailed provisions as to how "grievances" are to be processed and considered culminating with provisions for arbitration if the grievance is not resolved at one of the earlier stages of the procedure.

We are mindful of the congressional policy in favor of the settlement of disputes in the labor-management field through the machinery of arbitration. This was recognized in *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448, 456, and since reconfirmed in *United Steelworkers of America* v. *Warrior & Gulf Navigation Company,* 363 U.S. 574, 582-583, in which the Supreme Court admonished that in the interpretation of arbitration clauses of collective bargaining agreements "[d]oubts should be resolved in favor of coverage". Nevertheless *Warrior* also affirms that "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit".

Defendants' reliance upon *Warrior* and the similar teachings found in *United Steelworkers of America* v. *American Manufacturing Company,* 363 U.S. 564 and *United Steelworkers* v. *Enterprise Wheel & Car Corp.,* 363 U.S. 593, is misplaced. The arbitration clause here under consideration contracts to submit to arbitration only a grievance which is a "difference regarding wages, hours or working conditions". The claim of the employer for damages relates to neither wages, hours nor working conditions.

It does not involve a subject which it has contracted to submit to arbitration. The arbitration clauses considered in *Warrior* and *American Manufacturing* were broad in scope. They called for arbitration of all disputes or differences as to the "meaning" and "application" of the agreement. Likewise distinguishable by reason of the broad [fol. 178] scope of the arbitration clauses involved are *Signal-Stat* v. *Local 475, United Electrical R. & M. Wkrs.*, 2 Cir., 235 F. 2d 298; *Tenney Engineering Inc.* v. *United Electrical, R. & M. Wkrs.*, 3 Cir., 207 F. 2d 450 and *Lewittes & Sons* v. *United Furniture Workers*, S.D.N.Y., 95 F. Supp. 851 cited by defendants. We conclude that giving the language of the arbitration clause here under consideration its broadest scope it is not susceptible of an interpretation that covers the asserted dispute. Cf. *Drake Bakeries, Inc.* v. *Local 50, American Bakery and Confectionery Workers, International AFL-CIO*, 2 Cir., ... F. 2d ..... (February 17, 1961), 42 LC 16,798; *International Union* v. *Colonial Hardwood Floor Co.*, 4 Cir., 168 F. 2d 33, 35; *Cuneo Press, Inc.* v. *Kokomo Paper Handlers' Union No. 34*, 7 Cir., 235 F. 2d 108, 111, cert. den. 352 U.S. 912; *United Electrical R. & M. Wkrs.* v. *Miller Metal Products, Inc.*, 4 Cir., 215 F. 2d 221; *Hoover Motor Express Co.* v. *Teamsters, Chauffeurs, Etc.*, 6 Cir., 217 F. 2d 49, 53; *International Union* v. *Benton Harbor Malleable Industries*, 6 Cir., 242 F. 2d 536, 540-541, cert. den. 355 U.S. 814.

Nor are we impressed with defendants' contention that because certain grievances of the individual defendants have been submitted to arbitration under the provisions of the agreement plaintiff is bound to submit its claim for damages to arbitration. The employee grievances involve the pay deductions which precipitated the work stoppage and disciplinary restrictions imposed for participation therein. That some of the underlying issues which are or may become involved in the determination of those grievances may also possibly become an issue to be resolved in the ultimate adjudication of plaintiff's suit—the issues of which are yet to be framed by pleadings as yet unfiled —does not in our opinion require a stay of plaintiff's action. Plaintiff has not submitted the subject matter of its action to arbitration, nor consented to such arbitration,

merely because in conformity with its contract it is arbitrating employee grievances which involve some factors or "issues" in common with those which could possibly arise in the suit. The fact that a grievance under arbitration and a court action may share some issue or factor in common does not establish identity of subject matter. What plaintiff has submitted to arbitration under its con-[fol. 179] tract to arbitrate are matters different from the subject matter of its suit. It has not agreed to arbitrate the latter—and submission to arbitration is a matter of contract.

We conclude that the District Court did not err in denying a stay of plaintiff's action.

The District Court's dismissal of Count II of the complaint was based on the view that under Section 301 of the Labor-Management Relations Act (29 U.S.C.A. § 185)[3] suits of the nature alleged in Count II are no longer cognizable in state or federal courts. In our opinion the District Court erred in so concluding and in dismissing Count II. The 24 individuals named in Count II are employees of the plaintiff as well as members and officers of the Local Union and agents of the International. They were

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[3] Hereinafter referred to as Section 301, and which, in so far as pertinent, reads as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organizations may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

* * * * *"

in the bargaining unit covered by the collective agreement. Whether these individuals are regarded "somewhat as" third party beneficiaries to the collective contract[4] or that contract, though not signed by or naming them, is one directly between them and the employer, negotiated by their agent, because incorporated in the individual contract of hire,[5] they are bound by its provisions. *Young* v. *Klausner Cooperage Company,* 164 Ohio St. 489, 132 N.E. 2d 206; *Owens* v. *Press Publishing Co.,* 20 N.J. 537, 120 A.2d 442; *McLean Distributing Company* v. *Brewery and Beverage Drivers, et al.,* 254 Minn. 204, 94 N.W. 2d 514, [fol. 180] cert. den. 360 U. S. 917. The individual defendants are bound by the no-strike clause of the agreement. We do not mean to imply that the individual defendant is liable for breaches by others which he did not induce but he is liable for his own breach and any he does induce. And we recognize that each of the individual defendants may have no duty to remain in plaintiff's employ for any given period. But, under the contract, he does have a binding contractual obligation not to strike or engage in a work stoppage in violation of the no-strike clause. And he has a duty not to induce others to do so.

Count II alleges individual breaches by the 24 named defendants as well as their inducement of individual breaches by other employees. The 24 defendants are union officers presumably familiar with the terms of the agreement, including its no-strike clause. In considering a motion to dismiss, the allegations of the complaint must be viewed in the light most favorable to the plaintiff, and all facts well pleaded must be admitted and accepted as true. *Conley* v. *Gibson,* 355 U.S. 41. And we are not now concerned with what defenses might exist; what issues may be framed by subsequent pleading, nor with what the proof to be adduced may establish as to liability or nonliability of any of the defendants. If any set of facts provable under the allegations of Count II warrants recovery under accepted principles of law it states a cause

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[4] Cf. *J. I. Case Co.* v. *N.L.R.B.,* 321 U.S. 332, 336.

[5] Cf. *Ass'n of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.,* 210 F. 2d 623, 627, affirmed 348 U.S. 437.

of action. *Central Ice Cream Company* v. *Golden Rod Ice Cream Company*, 7 Cir., 257 F. 2d 417.

Count II seeks to hold the individual defendants liable for their own acts in breach of the contract. They are under a contractual obligation not to participate in a strike or work stoppage in violation of the no-strike clause. The Count alleges such participation.

In addition Count II alleges that the individual defendants induced other employees to breach the agreement. Indiana, under the doctrine of *Lumley* v. *Gye*, 2 El. & Bl. 216, 118 Eng. Reprint 749, recognizes liability for malicious interference with or inducement of breach of a contract and it has applied that doctrine in a situation where a defendant charged with inducing a breach of contract is [fol. 181] a party to the contract. *Wade* v. *Culp*, 107 Ind. App. 503, 23 N.E. 2d 615.[6]

Thus, apart from alleging a contract liability of each individual defendant for participating in a work stoppage in violation of his contractual obligation not to do so, Count II also alleges a tort liability recognized under Indiana law—tortious interference with and inducement of breach of contract obligations.

We are unable to agree with the defendants that Section 301 precludes assertion of the liability of individual employees bound by a collective agreement for participating in or inducing a work stoppage in violation of the agreement's no-strike clause where the union is being sued for an alleged breach in connection with the same work stoppage. The provision that a judgment against a labor organization shall not be enforceable against its members does not in and of itself preclude action against or recovery from individual members for their individual breaches of contract. Of course there can be but one satisfaction. The observation in *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, 470, relied upon by defendants, that Section

[6] In *Wade* v. *Culp* the defendant Wade, a party to the contract, was sued along with other defendants, strangers to the contract, for interfering with and inducing a breach. Cf. *Worrie* v. *Boze*, 198 Va. 533, 95 S.E. 2d 192 and *Motley, Green & Co.* v. *Detroit Steel & Spring Co.*, S.D.N.Y., 161 F. 389.

301 evidences a congressional intention that the union, like a corporation, should be the sole source of recovery was made with respect to an "injury inflicted by it", and in an entirely different context from that here involved. There are strikes or work stoppages without union participation, without the union having "called a strike" or being responsible therefor. And there can be work stoppages caused and participated in by some employees but not others.

Defendants place heavy reliance on *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236. But that case involved a determination of whether a state court had jurisdiction to award damages arising out of a union activity—peaceful recognition picketing—which the Supreme Court found "arguably within the compass of § 7 or § 8 of the [National Labor Relations] Act" [7] and thus [fol. 182] within a narrow area withdrawn from possible state activity and within which state jurisdiction must yield. The conduct of the individual defendants alleged in Count II of the complaint in the instant case is neither a protected activity under §157 nor an unfair labor practice embraced within the scope of §158 of 29 U.S.C.A. A strike or work stoppage in violation of a no-strike clause of a collective bargaining agreement is not an activity protected by federal law. And as conflict is the touchstone of pre-emption the rationale of *Garmon* is inapplicable to bar prosecution of Count II.

In *Wilson & Co.* v. *United Packinghouse Workers of America,* D.C. Iowa, 181 F. Supp. 809, relied on by defendants, the individual defendant officers of the union were sued individually and as representative of the class and membership of the Local Union in a count sounding in tort only, the claimed tort (p. 818) "being the inducing of a breach of the collective bargaining agreement". Unlike Count II of the complaint here under consideration the individual defendants were not sued in a count sounding in contract as well as in tort. But, apart from these differences, we are not disposed to follow the holding of *Wilson* that Section 301 precludes maintenance of an

[7] 29 U.S.C.A. §§ 157 and 158.

action for inducement of breach of contract against the union officers where the union also is sued for breach of contract under Section 301. That the individual defendants in Count II are officers of the Union defendants sued in Count I does not in our judgment insulate them from liability as employees of plaintiff, a status they also occupy, on the theory advanced by defendants and employed in *Wilson* that as officers of the Union they should be immune from liability for inducing a breach of *its* contract. The doctrine of *Hicks* v. *Haight,* 11 N.Y.S. 2d 912, that an officer of a corporation is not liable for inducing a breach of the corporation's contract is relied on by analogy to support the claimed immunity. But the New York rule is not without its limitations and is not recognized in a number of jurisdictions (Fletcher on Corporations, Vol. 3, 1947 Rev. Ed. §1001, pp. 501, 502 and 1960 Cum. Supp. pp. 56-58). In addition the no-strike clause of the collective agreement is binding on the individual defendants as employees whereas the officers or stockholders of a corporation are not personally obligated [fol. 183] on a contract of the corporation. A concise answer to *Wilson* is found in *Baun* v. *Lumber and Saw Mill Workers Union et al.,* 46 Wash. 2d 645, 284 P. 2d 275, 286, where it was succinctly pointed out:

> "What the statute relied on [Section 301] says . . . is that a judgment against a labor organization shall not be enforcible against its members, which is a far cry from saying that a judgment cannot be recovered against individual members in consequence of their individual actions. The argument is a complete *non sequitur.*"

It is our considered judgment that Count II stated a cause of action cognizable in the courts of Indiana and, by diversity, maintainable in the District Court. It was error to dismiss Count II.

The District Court's dismissal of Count III was predicated on its conclusion that the Norris-LaGuardia Act[8] precludes the injunctive relief sought. Plaintiff seeks a

[8] 29 U.S.C.A. § 101 and § 104.

permanent injunction operating *in futuro* against all of the defendants, and all to whom notice thereof might come, restraining them from any disruption of or interference with normal employment, operation or production in connection with any dispute which might be the subject of a grievance under the grievance procedure of the collective agreement, or any extension thereof, or any other such agreement containing like or similar provisions.

Norris-LaGuardia, subject to exceptions not here pertinent, withdraws jurisdiction from federal courts to issue an injunction in a case involving or growing out of a labor dispute. It is clear from the specific allegations of Count III that the conduct and work stoppages sought to be restrained are those which result from or involve labor disputes—differences concerning "wages, hours or working conditions" which are subject to the grievance and arbitration procedures. And the relief sought would clearly prohibit persons "participating or interested in such [a] dispute" from "[c]easing or refusing to perform any work . . ."

[fol. 184] In *Order of Railroad Telegraphers et al.* v. *Chicago & North Western Railway Co.*, 362 U.S. 330, 335, the Supreme Court after referring to the prohibitions of Section 4 of the Norris-LaGuardia Act and observing that said Act defines a labor dispute as including "any controversy concerning terms or conditions of employment . . . " stated:

> "Unless the literal language of this definition is to be ignored, it squarely covers this controversy. Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more cleary point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted."

It is implicit in the teachings of *Railroad Telegraphers* that it is not within a court's prerogatives to impose limitations on the clearly expressed congressional policy embodied in Norris-LaGuardia and that the Act removed the

possibility of use of injunctive powers in any labor dispute absent a contrary mandate from the Congress. In *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad Co.*, 353 U. S. 30, relied upon by the plaintiff, the Court had earlier found such a mandate to exist in the need to accommodate Norris-LaGuardia and the Railway Labor Act so that the obvious purpose of each of these statutes adopted as a pattern of labor legislation is preserved. The exception to the ban of Norris-LaGuardia there recognized was grounded on explicit provisions of the Railway Labor Act subjecting "minor disputes" to compulsory arbitration and declaring the Adjustment Board's decision "binding" upon both parties in order to avoid any interruption of transportation and attendant injury to the public because of such class of disputes. *Railroad Telegraphers* affirms that the doctrine of *Chicago River* operates within the narrowly confined limits of those requirements and does not even encompass other disputes in the field of railway labor-management so as to authorize injunctive relief against strikes or work stoppages involving other matters. *Locomotive Engineers* v. *M.K.T.R. Co.*, 363 U.S. 528.

Thus *Chicago River* is not a controlling precedent here and on the facts here alleged we find no mandate in Sec- [fol. 185] tion 301 to which Norris-LaGuardia must accommodate. *Lincoln Mills* does not say that Section 301 authorizes injunctive relief clearly prohibited by Norris-LaGuardia. Compelling arbitration is not prohibited by Norris-LaGuardia—enjoining strikes or work stoppages is. And there is nothing in the general language of Section 301, nor its purposes, as disclosed by the legislative history,[9] which evidences conflict with Norris-LaGuardia.

In so concluding we find ourselves in disagreement with *Chauffeurs, Teamsters & Helpers* v. *Yellow Transit Freight Lines*, 10 Cir., 282 F. 2d 345,[10] but supported by *A. H. Bull Steamship Co.* v. *Seafarers' International Union*, 2 Cir., 250 F. 2d 326.

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[9] See legislative history appended to *Lincoln Mills*, 353 U.S. 448, 485-546.

[10] Certiorari granted January 9, 1961.

Plaintiff contends that inasmuch as Count III contained a prayer that the court "declare the rights of the parties" it was error for the District Court to dismiss the Count even though injunctive relief is barred. We perceive no error in this connection. Count III does pray a declaration that the no-strike and grievance procedure clauses are legal, binding and enforceable. But no allegation is made that a controversy exist between the parties as to the validity or enforceability of either clause. The Count sets forth alternative conclusions that the conduct of defendants "shows" either that they do not regard the provisions valid and binding or deliberately violated them. Such allegation fails to charge the existence of controversy over validity or enforceability requisite to support an action for declaratory judgment.

The thoroughness of the briefs of the parties has been of material aid to the Court and although we have not made specific reference to some of the many authorities cited and analyzed therein we have considered each of the arguments advanced by the parties in support of their respective positions on the issues and discussed those we deemed necessary.

We conclude that the District Court did not err in denying the motion to stay the action nor in dismissing Count III of the complaint but did err in dismissing Count II. [fol. 186] In Appeal No. 13137 the order of the District Court denying defendants' motion to stay is affirmed.

In appeal Nos. 13092 and 13136 that portion of the judgment order of the District Court dismissing Count III of the complaint is affirmed and that portion of the judgment order dismissing Count II of the complaint and dismissing all individual defendants from the action is reversed and the cause remanded for further proceedings not inconsistent with the views herein expressed.

No. 13137 AFFIRMED
Nos. 13092 and 13136 AFFIRMED IN PART,
REVERSED IN PART AND REMANDED.

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[fol. 187]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 13092, 13136

SINCLAIR REFINING COMPANY, Plaintiff-Appellant,

vs.

SAMUEL M. ATKINSON, ET AL., Defendants-Appellees.

No. 13137

SINCLAIR REFINING COMPANY, Plaintiff-Appellee,

vs.

SAMUEL M. ATKINSON, ET AL., Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Indiana, Hammond Division

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JUDGMENT—April 25, 1961

Before: Hon. Elmer J. Schnackenberg, Circuit Judge, Hon. Latham Castle, Circuit Judge, Hon. J. Earl Major, Circuit Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Indiana, Hammond Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from in Appeal No. 13137 be, and the same is hereby, Affirmed.

It is further ordered and adjudged by this Court that in Appeal Nos. 13092 and 13136 that portion of the judg-

ment order of the District Court dismissing Count III of the complaint be, and the same is hereby, Affirmed, and that portion of the judgment order dismissing Count II of the complaint and dismissing all individual defendants from the action be, and the same is hereby, Reversed, and that this cause be, and it is hereby, Remanded to the said District Court for further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day.

It is further ordered and adjudged by this Court that the costs on these appeals be taxed in favor of Plaintiff, Sinclair Refining Company, and against the Defendants, Samuel M. Atkinson, et al.

[fol. 188] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 189]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1961

SAMUEL M. ATKINSON, ET AL., Petitioners,

vs.

SINCLAIR REFINING COMPANY

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—July 10, 1961

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 22, 1961.

Tom C. Clark, Associate Justice of the Supreme Court of the United States.

Dated this 10th day of July, 1961.

[fol. 190]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1961

SINCLAIR REFINING COMPANY, Petitioner,

vs.

SAMUEL M. ATKINSON, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—July 19, 1961

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 22, 1961.

Tom C. Clark, Associate Justice of the Supreme Court of the United States.

Dated this 19th day of July, 1961.

[fol. 191]

SUPREME COURT OF THE UNITED STATES

No. 430, October Term, 1961

SAMUEL M. ATKINSON, ET AL., Petitioners,

vs.

SINCLAIR REFINING COMPANY

ORDER ALLOWING CERTIORARI—December 11, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with No. 434 and a total of two hours is allowed for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 192]

SUPREME COURT OF THE UNITED STATES

No. 434, October Term, 1961

SINCLAIR REFINING COMPANY, Petitioner,

vs.

SAMUEL M. ATKINSON, ET AL.

ORDER ALLOWING CERTIORARI—December 11, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with No. 430 and a total of two hours is allowed for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.